United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

CHAMBERS OF JUDGE BAZELON

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BRIEF FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR - 8 1963

Nathan J. Paulson
CLERK

NO. 17,485

WILLIE JONES,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

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Washington 4, D. C.
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STATEMENT OF QUESTIONS PRESENTED

1. Since Public Law 87-423, 76 Stat. 40 (March 22, 1962) provided for justice tempered with mercy, would it not be inhuman to impose the death penalty when this Court, after careful consideration, affirmed the sentence of death by a vote of 5-4?

2. Whether the court below misconceived and misconstrued the purposes of Public Law 87-423, 76 Stat. 46 (March 22, 1962).

3. Whether the court below was in error in not making findings as to circumstances in mitigation and in aggravation.

4. Is not Public Law 87-423, 76 Stat. 46 (March 22, 1962) ambiguous in that no standards are set forth for weighing the elements of mitigation and aggravation?

5. Whether the court below committed reversible error in refusing to disqualify Dr. John R. Cavanagh, an ardent and outspoken foe of the Durham Rule in this Court.

6. Whether the mental examination made in this case complied with the order of the court.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 17,485

WILLIE JONES,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant was sentenced to death in the United States District Court for the District of Columbia on October 9, 1959. The conviction was affirmed by this Court by a vote of 5-4, 111 U.S.App.D.C. 276; 296 F.2d 398. Petition for writ of certiorari was denied, 370 U.S. 913. Pursuant to the provisions of Public Law 87-423, 76 Stat. 46 (March 22, 1962), a motion to reduce or modify sentence was filed July 16, 1962 (J.A. 40). A motion for mental examination was filed October 2,

1962 (J.A. 40). There was annexed to the motion for mental examination affidavit of Emmie Beasley (J.A. 41). The motion to modify sentence was denied November 8, 1962 (J.A. 56). On the same date, November 8, 1962, an order was signed granting leave to proceed in forma pauperis (J.A. 56). On November 14, 1962, notice of appeal was filed (J.A. 57). The case is properly before this Court for review.

STATEMENT OF THE CASE

The appellant was indicted in two counts, tried, convicted and sentenced for first degree murder and assault with intent to kill. The death sentence was imposed.

Appellant became enamored of a woman -- in fact was living with her and regarded her as his commonlaw wife. She was in the D. C. General Hospital for medical treatment and was visited by some male acquaintance. The appellant went to the hospital, had a gun concealed in a shoe box and shot and killed the deceased.

There were many instances in the life of the appellant that indicated mental instability -- in fact we contend he was of unsound mind. There was considerable testimony as to this at the trial. At one time he took poison in the presence of his commonlaw wife and was at another time involved in proceedings before the Commission on Mental Health.

After this Court affirmed by a vote of 5-4 and the Supreme Court denied certiorari, a motion to reduce or modify sentence was filed (J.A. 40). This was pursuant to Public Law 87-243, 87th Congress, H.R. 5143, approved March 22, 1962. A motion for mental examination was also filed. The affidavit of the sister, Emmie Beasley, was annexed to the motion for mental examination (J.A. 41) and this recited the following:

> "Affiant visits him regularly at the District Jail. She says that it has been apparent to her and to other members of the family that he is deteriorating mentally. He has lapses of memory, is very much depressed and at times talks irrationally."

There were various proceedings before the trial judge in connection with the motion to reduce or modify and certain doctors were suggested. Appellant suggested Dr. Robert P. Odenwald, Dr. Edward E. Rickman and Dr. Michael N. Miller. The Government suggested Dr. John R. Cavanagh, Dr. Albert E. Marland, Sr. and Dr. Elmer Klein (J.A. 51). At the time of the hearing on the motion for mental examination the following occurred (J.A. 50):

> "MR. LAUGHLIN: Your Honor, I would like to say this, that while there is no question Dr. Cavanagh is a recognized authority throughout the country, the Defendant, himself, does object to Dr. Cavanagh.
>
> THE COURT: Well, I will have that in mind also."

The court appointed two of the three names suggested by the Government -- that is to say, Dr. Cavanagh, Dr. Marland -- and Dr. Robert H. Groh. The following report was submitted by the psychiatrists (J.A. 60-61):

> "We, the three undersigned, are submitting our joint report on Willie Jones, whom you asked us to see as a panel. We conducted this evaluation of Willie Jones on November 22, 1962 at the District Jail at 9:00 A.M.
>
> "Willie Jones refused to talk to us in the assigned room where he was to be brought to meet with us. We then went on to the cell block and talked to him very briefly through the barred door. He was advised why we were there and that it was under order of the Court and that we wanted to ask him some questions. He said, 'I have nothing to talk about, I am going to die, that is all there is to it, therefore, there's nothing to say'. He then turned around and walked away and would not come back. During this brief contact with him he was restless, shrugged his shoulders frequently and was quite tense, obviously.
>
> "It is the joint opinion of the three undersigned, that Willie Jones showed no inappropriate affect, but rather was a tense individual who recognized the nature of the sentence that had been imposed upon him and it was our opinion that he was showing the severe tension in the realization and understanding of what was to happen to him. It is our opinion that he is completely oriented and understands the nature of his problem."

The court denied the motion to reduce. In the opinion denying the motion to reduce the court said (J.A. 45):

> "Under the statute relied upon by the defendant, the sentence or resentence shall be governed by the provisions of law in effect prior to the effective date of the Act, 'Provided, that the Judge may, in his sole discretion, consider circumstances

in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment'.

"The 'sole discretion' vested in the judge is a judicial discretion. It does not mean the arbitrary rule or pleasure of the judge who exercises it. It is not personal discretion. It is to be exercised in conformity with the spirit of the law.

"In this case, the spirit as well as the letter of the law is that the sentence shall be governed by the provisions of law in effect prior to the effective date of the Act unless, after considering circumstances in mitigation and in aggravation, the judge in his sole discretion shall make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment.

"Upon consideration of all of the circumstances in mitigation and in aggravation, it is the determination of the Court that the case in its opinion does not justify a sentence of life imprisonment but that the sentence shall be governed by the provisions of law in effect prior to the effective date of Public Law 87-423.

"The motion for reduction of sentence is denied."

Notice of appeal was timely filed and the case is here for review.

STATUTES INVOLVED

Title 22, Section 2401 of the D. C. Code:

> "Murder in the first degree.
>
> Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison * * *, is guilty of murder in the first degree."

Title 23, Section 701 of the D. C. Code:

"Capital punishment--How inflicted.

The mode of capital punishment shall be by the process commonly known as electrocution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current shall be continued until such convict is dead."

Public Law 87-423, 76 Stat. 46, approved March 22, 1962:

"The punishment of murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment; or if the jury, having determined by unanimous vote the guilt of the defendant as charged, is unable to agree as to punishment it shall inform the court and the court shall thereupon have jurisdiction to impose and shall impose either a sentence of death by electrocution or life imprisonment.
* * * *

"Cases tried prior to the effective date of this Act and which are before the court for the purpose of sentence or resentence shall be governed by the provisions of law in effect prior to the effective date of this Act: Provided, That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment. Such a sentence of life imprisonment shall be in accordance with the provisions of this Act. * * *."

STATEMENT OF POINTS

1. Public Law 87-423, 76 Stat. 46, contemplates that for those persons sentenced to death before the effective date of the Act there should be a reappraisal and a re-examination as to the validity of the death sentence imposed.

2. Public Law 87-423, 76 Stat. 46 required findings to be made by the trial judge setting forth the matters in aggravation and matters in mitigation.

3. A trial court is without guidance under Public Law 87-423, 76 Stat. 46 since no standards were set by the Congress as to the procedure to be followed by a trial judge affecting those persons sentenced to death prior to the enactment of the legislation referred to.

4. When the life of an accused is in the balance and a mental examination is ordered, no one should serve on the examining panel who has in season and out of season criticized the decisions of this Court as to matters affecting insanity as a defense to a crime.

5. When a mental examination is ordered, it should be a thorough and comprehensive examination and the examining panel should not take its duties lightly as was done in this case.

SUMMARY OF ARGUMENT

1. Since this Court has before it the entire record of this cause, it is our view that considering the volume of psychiatric testimony in this case and four Judges of this Court having recognized the unfairness of the first trial and the necessity of a new one that it would be inhuman and in fact a violation of the Eighth Amendment to carry out the death sentence in this case.

2. It is apparent that the Congress in passing H. R. 5143, Public Law 87-423, 76 Stat. 46, desired to temper justice with mercy and therefore the court below misconstrued and misconceived the purpose of this new statute.

3. There was a duty on the part of the court below to set forth in its opinion those factors in mitigation and those factors in aggravation and the lower court should have made findings accordingly.

4. We contend that Public Law 87-423, 76 Stat. 46 is ambiguous in that it does not set forth the standards to be followed by a trial judge in carrying out the provisions of the statute insofar as it relates to those persons who were sentenced to death prior to the approval of the Act.

5. It is well known that Dr. John R. Cavanagh is an outspoken foe of the Durham Rule announced by this Court and has criticized repeatedly this Court's ruling as to decisions affecting insanity as a defense to crime.

6. The court required a full and complete mental examination. The report submitted by the psychiatrists did not, therefore, comply with the order of court.

ARGUMENT

I. Public Law 87-423, 76 Stat. 46, contemplates that for those persons sentenced to death before enactment of the Act there should be a reappraisal and reexamination

as to the validity of the death sentence imposed, and in the circumstances of this case it would be inhuman to carry out the death penalty.

It is apparent, of course, that the Congress felt that the mandatory death penalty heretofore imposed in the District of Columbia for a conviction of first degree murder was unfair and unjust and that the jury should decide whether the facts and circumstances of the case justified the imposition of the death penalty. Under the law, as we now have it, the jury in deliberating must consider the evidence and determine whether the facts and circumstances justify the imposition of the death penalty. If they cannot so agree, then the court will impose life imprisonment. Therefore, that vests great discretion with the jury. The appellant in this case did not have the benefit of this new legislation. The Congress therefore, in considering this legislation, made it retroactive to those persons under sentence of death before the law was approved. It must be apparent therefore, considering all the aspects in appellant's case and all the evidence introduced at the time of trial, that the conviction is not free from doubt. Four judges of this Court were of the view that the trial was not a fair one and that the appellant should have a new trial. In the light of this, it would be inhuman and

in our judgment a violation of the Eighth Amendment to now send the accused to his death.

When we consider that this appellant has been in the District Jail for some five years and has been under a death sentence some four years, is it not permissible to inquire whether the majority judges would not consider anew the contentions made by the minority judges. If we could use the language from Allen v. United States, 164 U.S. 492, where that Court in approving the so-called Allen Charge said this:

> "It certainly cannot be the law that each juror should not listen with deference to the arguments, and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself. It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at that moment, or that he should close his ears to the arguments of men who are equally honest and intelligent as himself."

Therefore, we strongly urge that the majority in this case listen carefully, attentively and without any "blind determination" to the views and arguments of the minority "who are equally honest and intelligent".

II. The court below misconceived and misconstrued the purposes of Public Law 87-423, 76 Stat. 46, approved March 22, 1962.

We believe that our contention with respect to this point has been covered in our first point. We would refer

to the well written opinion of the Supreme Court of the United States in Andres v. United States, 333 U.S. 740. The concurring opinion of Justice Frankfurter set forth in detail the tendency of the states to remove from the statutes the mandatory death penalty and to vest with the jury discretion as to whether the facts and circumstances justify the imposition of the death penalty.

No one can now say with any certainty that had the jury had this discretion in April 1959 when the jury was deliberating the fate of the accused that the death penalty would have been voted. The jury, in our judgment, would have considered carefully the testimony as to the mental disability of the appellant.

III. The court below was in error in not making findings as to circumstances in mitigation and in aggravation.

It is our view that when the statute provides "That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment," it was the duty of the trial judge to make findings to the effect that the circumstances in mitigation outweigh the circumstances in aggravation, or the circumstances in aggravation outweigh the circumstances in mitigation and it should have been clearly set forth.

IV. Public Law 87-423, 76 Stat. 46 is ambiguous in that no standards are set forth for weighing the elements of mitigation and aggravation.

We believe that this statute is ambiguous inasmuch as it does not chart the course to be followed by the trial judge. No standards are set forth which the trial judge can follow. In other words, the statute should have set forth just what is meant by "circumstances in Mitigation" and what is meant by "circumstances in aggravation".

V. The court below committed reversible error in refusing to disqualify Dr. John R. Cavanagh when objection to his appointment was made by appellant.

The trial judge took the view that a mental examination was entirely justified. Since the appellant was under sentence of death, it is our view that his wishes should have been respected. It is well recognized that Dr. John R. Cavanagh is an avowed foe of the Durham Rule announced by this Court and has in season and out of season criticized various decisions of this Court having to do with insanity as a defense to a crime. Since objection was made prior to his appointment, Dr. Cavanagh should have been disqualified (J.A. 50).

VI. The mental examination made in this case did not comply with the order of the trial court.

The order of the trial court provided (J.A. 55):

> "1. That Dr. John R. Cavanagh, address - 1703 Rhode Island Avenue, N.W., Washington, D.C.; Dr. Robert H. Groh, address - 1801 Eye Street, N.W., Washington, D.C.; and Dr. Albert E. Marland, Sr., address - 1216 16th Street, N.W., Washington, D.C., examine the defendant Willie Jones at the District of Columbia Jail or at the District of Columbia Jail Hospital, and that after such examinations the said Doctors furnish the Court with a report as to whether the defendant is now mentally competent to understand the proceedings against him and properly assist his counsel and whether the mental condition of the defendant is such that he understands the nature and extent of his punishment in order to assist the Court in determining whether the sentence heretofore imposed in this case should be executed. Copies of said report are to be furnished counsel for the defendant and counsel for the Government.
>
> "2. That the Doctors may, if they find need so to do, employ a psychologist or psychologists to assist them in their examinations."

This order, of course, contemplated complete, thorough and exhaustive examination and the trial court even permitted the psychiatrists to employ a psychologist or psychologists to assist them. It is apparent that the so-called examination was hurriedly done. At Joint Appendix 60 we find the following report was submitted to the trial judge:

> "We, the three undersigned, are submitting our joint report on Willie Jones, whom you asked us to see as a panel. We conducted this evaluation of Willie Jones on November 22, 1962 at the District Jail at 9:00 A.M.
>
> "Willie Jones refused to talk to us in the assigned room where he was to be brought to meet with us. We then went on to the cell block and talked to him very briefly through the barred door. He was advised why we were there and that it was under order of the Court and that we wanted to ask

him some questions. He said, 'I have nothing to talk about, I am going to die, that is all there is to it, therefore, there's nothing to say'. He then turned around and walked away and would not come back. During this brief contact with him he was restless, shrugged his shoulders frequently and was quite tense, obviously.

"It is the joint opinion of the three undersigned, that Willie Jones showed no inappropriate affect, but rather was a tense individual who recognized the nature of the sentence that had been imposed upon him and it was our opinion that he was showing the severe tension in the realization and understanding of what was to happen to him. It is our opinion that he is completely oriented and understands the nature of his problem."

We contend that this examination did not comply with the order of the court. The report does not set forth what Dr. Groh thought about him; what Dr. Marland thought about him or what Dr. Cavanagh thought about him. As a matter of fact it would be the eighth Wonder of the World to contemplate that three psychiatrists could think alike in a matter such as this. It was not explained what was meant by "no inappropriate affect" or what was meant by "a tense individual who recognized the nature of the sentence" or "the severe tension in the realization and understanding of what was to happen to him". The report left unanswered the requirement of the court's order as to "whether the defendant is now mentally competent to understand the proceedings against him" and whether the defendant can "properly assist his counsel" or "whether the mental condition of the defendant is such that he understands the nature and

extent of his punishment in order to assist the Court in determining whether the sentence heretofore imposed in this case should be executed".

We say, therefore, that this was no examination at all. We make the further observation that since the order of the court provided that the psychiatrists had the right to employ a psychologist or psychologists to assist them that the requirement that the report be submitted by December 10, 1962 when the order was entered only on November 8, 1962 was not sufficient time to carefully consider the condition of the defendant and to evaluate the elements of his mental disorder. We know from experience that St. Elizabeths Hospital in an examination of this kind generally insist upon a period of ninety days.. Therefore we say that the time was far too short to permit the psychiatrists to carry out the requirements of the court order. In any event, we say that the examination did not comply with the terms of the court order.

CONCLUSION

In conclusion we must not forget the language of the Supreme Court in State of Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, where the Court said:

> "The traditional humanity of modern Anglo-American law forbids the infliction of unnecessary pain in the execution of the death sentence. Prohibition against the wanton infliction of pain has come into our law from the Bill of Rights of 1688.

The identical words appear in our Eighth Amendment."

We have always felt that the execution of Francis in the circumstances of his case was barbaric and contrary to all our conceptions of justice and in our opinion, although the majority decided otherwise, a violation of the Eighth Amendment. The dissenting opinion quoted from In re Kemmler, 136 U.S. 443, as follows:

> "Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel within the meaning of that word as used in the constitution. It implies there something inhuman and barbarous -- something more than the mere extinguishment of life."

When we consider that the appellant has been lingering in the death cell now for four years, that certainly "implies * * * something more than the mere extinguishment of life".

In view of the above, it is our view that the judgment of the court below should be reversed and that since this Court now has before it the right to fix punishment, the order of this Court direct that the death sentence be vacated and the appellant given a sentence of life imprisonment.

/s/ James J. Laughlin
James J. Laughlin
National Press Building
Washington 4, D. C.
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of March, 1963 mailed copy of the foregoing Brief for Appellant to David C. Acheson, Esq., United States Attorney, U.S. Court House, Third and Constitution Avenue, N.W., Washington, D.C.

/s/ James J. Laughlin
James J. Laughlin

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,485

WILLIE JONES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
JOSEPH A. LOWTHER,
BARRY SIDMAN,
Assistant United States Attorneys.

No. 17,485

QUESTIONS PRESENTED

Appellant was convicted of first degree murder and sentenced to death. He moved for the reduction of his sentence under P.L. 87-423, and his motion was denied. He moved for a psychiatric examination, stating that it was required by the interests of justice. An examination was conducted by three psychiatrists, who found that appellant recognized and understood the nature of the sentence imposed. In the opinion of the appellee the following questions are presented:

1. Is the denial of appellant's motion to reduce his sentence reviewable, and if so, was that denial arbitrary and capricious?

2. Was appellant denied due process of law with respect to the conduct of his mental examination?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,485

WILLIE JONES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant Willie Jones was convicted on October 9, 1959 of the August 5, 1958 first degree murder of Reginald Winters.[1] On October 9, 1959 he was sentenced, pursuant to statutory compulsion, to death.[2] His appeal to this Court was unsuccessful. *Jones* v. *United States*, *supra*.

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[1] His companion conviction of assault with intent to kill is irrelevant to this appeal. See *Jones* v. *United States*, 111 U.S.App. D.C. 276, 296 F.2d 398 (1961), *cert. denied*, 370 U.S. 913, for a summary of the facts constituting appellant's crimes.

[2] At the time of appellant's conviction and sentence, D.C. Code § 22-2404 provided in pertinent part that: "The punishment of murder in the first degree shall be death by electrocution."

On March 22, 1962 Congress amended D.C. Code § 22-2404, abolishing the mandatory death penalty for first degree murder, and providing for the discretionary reduction to life imprisonment of death sentences imposed prior to the amendment.[3] Pursuant to the amendment, on July 16, 1962 appellant moved the District Court to reduce his sentence to life imprisonment (J.A. 40). On October 2, 1962 appellant moved the court for a mental examination suggesting that it was required in the interests of justice (J.A. 40-41).

---

[3] Section 2404, as amended, reads:

> The punishment of murder in the first degree shall be death by electrocution unless the jury by unanimous vote recommends life imprisonment; or if the jury, having determined by unanimous vote the guilt of the defendant as charged, is unable to agree as to punishment it shall inform the court and the court shall thereupon have jurisdiction to impose and shall impose either a sentence of death by electrocution or life imprisonment.
>
> Notwithstanding any other provision of law, a person convicted of first degree murder and upon whom a sentence of life imprisonment is imposed shall be eligible for parole only after the expiration of twenty years from the date he commences to serve his sentence.
>
> Whoever is guilty of murder in the second degree shall be imprisoned for life or not less than twenty years.
>
> [Cases tried prior to the effective date of this Act and which are before the court for the purpose of sentence or resentence shall be governed by the provisions of law in effect prior to the effective date of this Act: *Provided*, That the judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event, he shall sentence the defendant to life imprisonment. Such a sentence of life imprisonment shall be in accordance with the provisions of this Act.]
>
> In any case tried under this Act as amended where the penalty prescribed by law upon conviction of the defendant is death except in cases otherwise provided, the jury returning a verdict of guilty may by unanimous vote fix the punishment at life imprisonment; and thereupon the court shall sentence him accordingly; but if the jury shall not thus prescribe the punishment the court shall sentence the defendant to suffer death by electrocution unless the jury by its verdict indicates that it is unable to agree upon the punishment, in which case the court shall sentence the defendant to death or life imprisonment.

A hearing was held on appellant's motions on October 5, 1962. Appellant's trial judge, the Honorable Joseph C. McGarraghy, J., denied appellant's motion to reduce his sentence (J.A. 42), but granted the motion for a mental examination. Counsel were requested to recommend psychiatrists to conduct the examination, and to agree upon the form of an order (J.A. 43-44). On October 19, 1962 Judge McGarraghy filed his opinion denying appellant's reduction of sentence motion (J.A. 44-46).[4]

On October 30, 1962 a further hearing was held on appellant's motion for a mental examination. Appellant agreed to the form of an order (J.A. 48), and offered the names of three psychiatrists (J.A. 49, 51, 52). Appellee also suggested three psychiatrists (J.A. 50, 51). At a further hearing on November 8, 1962 Judge McGarraghy advised counsel of his choice of examining psychiatrists, and ordered appellant's examination by them (J.A. 52-55).[5] The doctors were ordered to report to the court as to appellant's mental competency to understand the proceedings against him and properly assist his counsel, and to report whether appellant understood the nature and extent of his punishment (J.A. 55).

On November 16, 1962 appellant prepared a *pro se* motion for a mental examination; it was filed November 19 with Judge McGarraghy's notation that an examination had been ordered (J.A. 58).

On November 20, 1962 appellant moved to disqualify one of the three doctors selected to examine him. The doctor's integrity and ability were conceded, but an antipathy towards the "Durham rule" was alleged. Any

[4] The court filed a formal order denying appellant's motion on November 8, 1962; appellant apparently had not construed the court's October 19 opinion as an appealable order. Appellant took an immediate forma pauperis appeal from the November 8 order. (J.A. 53, 54, 56, 57).

[5] The selected doctors were John R. Cavanagh, Albert E. Marland, and Robert H. Groh. Appellant had noted an objection to Dr. Cavanagh on October 30. Drs. Cavanagh and Marland had been suggested by appellee. (J.A. 50, 51.) Both appellant and appellee had agreed that the panel be composed of psychiatrists not affiliated with federal penal institutions (J.A. 43).

Negro psychiatrist, stated appellant's motion, would suffice as a substitute. (J.A. 59.) The motion was denied on November 27, 1962.

The three selected psychiatrists examined appellant at the D. C. Jail on November 26, 1962. Appellant was uncooperative and the doctors' contact with him was brief. Their report, filed November 28, stated their unanimous opinion that appellant "showed no inappropriate affect, . . . recognized the nature of the sentence that had been imposed upon him and . . . was showing the severe tension in the realization of what was to happen to him." The report concluded: "It is our opinion that he is completely oriented and understands the nature of his problem." (J.A. 60-61.)

There were no further proceedings in the District Court. No exception to the doctors' report was taken by appellant.

SUMMARY OF ARGUMENT

A death sentence for first degree murder does not violate the Eighth Amendment.

The denial of appellant's motion to reduce his sentence is not reviewable. If reviewable, the denial was not arbitrary and capricious.

In denying the motion, the trial judge was not required to make findings of fact. Neither statutory nor case law call for the making of findings.

Amended D.C. Code § 22-2404 is not ambiguous in its use of the words "aggravation" and "mitigation" and is constitutional.

Appellant's mental examination was conducted fairly, and was adequate support for the conclusions reached by the examiners. The examining panel was fairly constituted.

ARGUMENT

I

Appellant's Death Sentence Does Not Violate the Eighth Amendment

Capital punishment *per se* is not cruel and unusual punishment. It "cannot be said to violate the constitutional concept of cruelty." *Trop* v. *Dulles*, 356 U.S. 86, 99 (1958). The Eighth Amendment is, of course, violated where a punishment is "flagrantly and plainly oppressive" and so wholly disproportionate to the nature of the offense as to shock the moral sense of the community." Vol. 24B C.J.S. p. 548 (1962). See *Weems* v. *United States*, 217 U.S. 349 (1910); *O'Neil* v. *Vermont*, 144 U.S. 323, 331 (1892).

With malice and premeditation appellant shot and killed one person and attempted to kill another. *Jones* v. *United States*, *supra*, 111 U.S.App.D.C. at 284, 296 F.2d at 406. His sentence has been reviewed and upheld by the District Court (J.A. 44-46). It is constitutional. *Cf.*, *Moore* v. *Arkansas*, 231 Ark. 22, 331 S.W. 2d 841 (1960); *Walton* v. *Arkansas*, 232 Ark. 86, 334 S.W. 2d 657 (1960) (rev'd on other grounds); *Arizona* v. *Fenton*, 86 Ariz. 111, 341 P.2d 237 (1959).

Appellant views his conviction as "not free from doubt." (Appellant's brief, p. 9). He is in error. *Jones* v. *United States*, *supra*, which held that appellant's conviction was legal, is the law of this case. See *Kaku Nagano* v. *Brownell*, 212 F.2d 262 (7th Cir. 1954); *Winhoven* v. *United States*, 209 F.2d 417 (9th 1954). In effect, appellant argues that the existence of a dissent to the court's opinion in *Jones* v. *United States*, *supra* mitigates his crime. But an appellate court's disagreement on a point of law is not a factor in mitigation of a crime. See *Durant* v. *Essex Co.*, 74 U.S. 107 (1868); *Kaku Nagano* v. *Brownell*, *supra*. Indeed, appellate court review, if at all relevant to a motion to reduce sentence, acts against mitigation, since, absent review, the conviction's legality will not have been conclusively resolved.

Appellant argues, in effect, that a judge of this Court could, simply by noting a dissent, compel the reduction of a sentence imposed by the District Court, whether or not such be his intention. But sentencing is not the business of appellate courts. See *Iowa* v. *Nutter*, 248 Iowa 772, 81 N.W. 2d 20 (1957). And the amendment of sentencing statutes subsequent to the imposition of a particular sentence, as in the case at bar, does not alter that sound principle. See *Duffel* v. *United States*, 95 U.S.App.D.C. 242, 221 F.2d 523 (1954); *Barton* v. *Georgia*, 81 Ga. App. 810, 60 S.E. 2d 173 (1950).

II

The District Court Was Not Required To Make Findings As To Circumstances In Mitigation and Aggravation When It Denied Appellant's Motion To Reduce His Sentence

Appellant asserts, without reason or authority, the negative of the proposition stated in the title of this section. "Findings" are not called for by P.L. 87-423, which authorized appellant's motion. Nor are they called for in the case of any other motion to reduce a sentence. *Cf.*, Fed. R. Civil P. 52(a). "Findings" are not essential to due process where not expressly required. The trial judge noted his "consideration of all the circumstances in mitigation and in aggravation" (J.A. 46), and his review of the facts of the case (J.A. 42). More was not required.[6]

---

[6] Congress did not intend that this Court review Judge McGarraghy's determination. Appellant moved to reduce his sentence to life imprisonment pursuant to a law which provided that such reduction of sentence was a matter within a judge's "sole discretion." Appellant's sentence was within statutory limits, and this Court lacks control over it. *Brown* v. *United States*, 222 F.2d 293 (9th Cir. 1955); *Flores* v. *United States*, 238 F.2d 758 (9th Cir. 1956). "[A]n appellate court has no authority either to reduce or modify a sentence or order the trial judge to do it on appeal from a denial of a motion under Rule 35." *Bryson* v. *United States*, 265 F.2d 9, 14 (9th Cir. 1959), *cert. denied*, 355 U.S. 817. See also *George* v. *United States*, 266 F.2d 343 (9th Cir. 1958);

III

Amended D.C. Code § 22-2404 Is Not Ambiguous

Apparently challenging the constitutionality of D.C. Code § 22-2404, appellant criticizes the statute's failure to define "mitigation" and "aggravation." His argument is without merit; the terms require no statutory definition. See *Jordan* v. *DeGeorge*, 341 U.S. 223 (1951); *Wyngaard* v. *Kennedy*, 111 U.S.App.D.C. 197, 295 F.2d 184 (1961); *Brotherhood of Locomotive Firemen* v. *I.C.C.*, 79 U.S.App.D.C. 318, 147 F.2d 312 (1945), *cert. denied*, 325 U.S. 860; *Hengesbach* v. *Hengesbach*, 73 U.S.App. D.C. 1, 114 F.2d 845 (1940); *District of Columbia* v. *Mt. Vernon Seminary*, 69 U.S.App.D.C. 251, 100 F.2d 116 (1938). *Cf.*, *Waters-Pierce Oil Co.* v. *Texas*, 212 U.S. 86, 111 (1909); *Swift & Co.* v. *United States*, 196 U.S. 375, 396 (1905).

IV

Appellant's Mental Examination Was Adequately Conducted By Competent Psychiatrists

A. *Appellant's Competency Was Fairly Determined By Qualified Psychiatrists.*

Appellant was examined by three psychiatrists, one of whom (Dr. Cavanagh) he objected to.[7] The factual basis for his objection, if there is any, is not in this record. Even if based on fact, his objection is not well taken. Opinions as to the "Durham rule" are irrelevant to a de-

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United States v. *LoDuca*, 274 F.2d 57, 59 (2d Cir. 1960); *Roth* v. *United States*, 255 F.2d 440, 441 (2d Cir. 1958), *cert. denied*, 358 U.S. 819; *Biren* v. *United States*, 202 F.2d 440 (9th Cir. 1953); *Kimbaugh* v. *United States*, 199 F.2d 453 (5th Cir. 1952). If nonreviewability is the general rule, then it is, if possible, more strongly so in the case of a motion addressed to a judge's "sole discretion." *Cf.*, *Ex Parte Public National Bank*, 278 U.S. 101, 104 (1928).

[7] Appellant fails to state the jurisdictional basis for this appeal as it concerns his mental examination. Appellee does not concede that an appealable issue is presented herein.

termination of competency; the considerations relevant to competency are different from those relevant to criminal responsibility. *Winn* v. *United States*, 106 U.S.App.D.C. 133, 270 F.2d 326 (1959), *cert. denied*, 365 U.S. 848; *Lyles* v. *United States*, 103 U.S.App.D.C. 22, 254 F.2d 725 (1957), *cert. denied*, 356 U.S. 961; *Blunt* v. *United States*, 100 U.S.App.D.C. 266, 244 F.2d 355 (1957). In any event, even if Dr. Cavanagh had not been qualified to evaluate appellant's mental state, Drs. Marland and Groh were so qualified; they were and are fully acceptable to appellant. Accordingly, prejudice from the inclusion of Dr. Cavanagh as a member of the examining panel does not appear.

B. *Appellant's Examination Was Adequate*

Appellant attacks the psychiatrists' examination as "hurriedly done."[8] Impliedly, he calls their conclusions arbitrary and capricious, merely because their examination was abbreviated (due to appellant's lack of cooperation). He offers no authority for the proposition that accurate diagnoses of competency are dependent upon examinations of a certain duration. Simply stated, he disagrees with the psychiatrists. Disagreement without more, however, is not enough. There is nothing in the record of this case which suggests that the conclusion of Drs. Marland, Groh and Cavanagh that appellant is now competent is erroneous, or was arrived at in an arbitrary and capricious manner. And the burden is appellant's. See *Solesbee* v. *Balkcon, supra; Phyle* v. *Duffy*, 334 U.S. 431 (1948); *Nobles* v. *Georgia*, 168 U.S. 398 (1897);

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[8] It should be noted that Judge McGarraghy was vested with broad discretion in deciding whether to have appellant examined in the first instance. See *Solesbee* v. *Balkcon*, 339 U.S. 9, 13 (1950) (acknowledging the "universal common-law principle that upon a suggestion of insanity after sentence, the tribunal charged with responsibility must be vested with broad discretion in deciding whether evidence shall be heard. This discretion has usually been held nonreviewable by appellate courts.")

Leick v. *Colorado*, 345 P. 2d 1054 (1959). *Cf.*, *Snider* v. *Cunningham*, 292 F.2d 683 (4th Cir. 1961).[9]

CONCLUSION

Wherefore, it is respectfully submitted the order of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
JOSEPH A. LOWTHER,
BARRY SIDMAN,
Assistant United States Attorneys.

[9] For discussions of the constitutionality, logic, and morality of executing a criminal who does not understand the nature and purpose of his punishment, see Guttmacher & Weihofen, Psychiatry and The Law 433-36 (1952); Perkins on Criminal Law 742 (1957). And see *Caritativo* v. *California*, 357 U.S. 549 (1958); *Forthopper* v. *Swope*, 103 F.2d 707, 709 (9th Cir. 1939).

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JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,485

WILLIE JONES

Appellant

v.

UNITED STATES OF AMERICA

Appellee

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JOINT APPENDIX

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
v.) Criminal Case No. 843-58
)
WILLIE JONES,)
Defendant)

1

Washington, D.C.
April 13, 1959

The above-entitled cause came on for hearing before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:35 a.m.

* * * * *

15

GEORGE MORONT

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

16

DIRECT EXAMINATION

BY MR. LOWTHER:

Q. Your name is George Moront, M-o-r-o-n-t; is that right, sir? A. Yes, sir.

Q. And you are a physician? A. Yes, sir.

* * * * *

Q. Now, were you at the District of Columbia General Hospital on the 5th day of August, 1958, a Tuesday? A. Yes, sir.

Q. In the evening hours, sir, where were you, in the early evening hours? A. I was on the north end of the surgical building on the third floor.

Q. There came a time when you heard what you thought were gun shots? A. Yes, sir.

Q. On August 5? A. Yes, sir.

17 Q. What time was that, sir? A. I can't give you the exact hour, but it was, oh, around eight o'clock.

Q. In the evening? A. Yes, sir.

Q. After you heard these sounds, what did you do, Dr. Moront? A. I went down the fire exit on the north end of the building to the second floor, where I thought the shots had come from. Why, I don't know, but I turned right, went down towards the center of the building; and there met another physician. The two of us were puzzling why -- what had happened.

Q. Apart from what you were puzzling, just tell me where you went? A. To the center of the building.

* * * * *

18 Q. You had a conversation with an orderly, yes, or, no? A. Yes.

Q. As a result of that conversation, where did you go? A. To surgery, second north.

Q. And when you arrived at surgery, second north -- you have reference to a ward; do you not, Doctor? A. Yes, sir.

* * * * *

20 Q. Did you have any other physicians with you at the time? A. There was another physician. His name was Dr. George Agard, right behind me, three steps, four steps.

Q. Did you, yourself, try to perform what I term -- for the lack of a medical term - a cardiac massage? A. Yes, sir.

Q. What is the medical term for that? A. Cardiac massage.

Q. Tell His Honor and the Jury what you did with relation to the body of Winters in order to try to do this cardiac massage on him?

MR. LAUGHLIN: Your Honor, we would object to this. I think it would just accentuate some of the circumstances of this. There is no doubt that the victim is dead. We concede that.

* * * * *

BY MR. LOWTHER:

Q. Let me ask you this one last question. Were you there when the body of the deceased, Winters, was removed from the ward? A. Yes, sir.

Q. Do you recall whether or not you noticed any object beneath
21 the body, that is, in the place where the body was lying? A. As I recall it, I noticed in the blood on the floor what I took to be a bullet.

* * * * *

22 CHRISTOPHER J. MURPHY

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

BY MR. LOWTHER:

Q. Your name is Christopher J. Murphy? A. That is right.

Q. And you are a physician? A. Yes, sir.

Q. For how long? A. Forty-five years, or more.

Q. All right, Dr. Murphy. How long have you been a Deputy Coroner in the District of Columbia?

* * * * *

Q. How long have you been Deputy Coroner? A. Twenty-eight, twenty-nine years.

* * * * *

24 A. * * *

My autopsy revealed that he came to his death as a result of hemorrhage and shock caused by gunshot wounds of the chest entering the lung and large blood vessel of the chest.

Q. Now, will you tell His Honor and the Jury, do you have a point of entry for the gunshot wound that was the fatal wound? A. Yes, sir. The fatal wound was in the left chest, three inches below the angle in the left front of the armpit, the fold that runs down from the axilla, in the front, three inches below the angle.

The wound of entrance was about where I am pointing; and this wound took a course from left to right, backward, and exited on the right side just below the angle of the shoulder blade.

There was also a gunshot wound of entrance and exit in the left arm, where a bullet had passed completely through.

25 This bullet in the chest passed through the lung and the aorta, which is the large blood vessel that comes off of the heart.

Q. And the first bullet that you described, the one that entered the left part of the front of the chest -- I use the word -- you say is the fatal bullet? A. Yes, sir.

Q. This aorta that you speak of, can you tell us whether or not the bullet punctured the aorta? A. It had punctured the aorta.

Q. What is the aorta, Doctor? A. The aorta is the large blood vessel that comes off of the heart. It is the largest blood vessel that supplies the head, neck, and then divides and supplies the blood to the lower part of the body.

* * * * *

CROSS EXAMINATION

BY MR. LAUGHLIN:

Q. Doctor, can you tell us, based on your training and experience, how far was the weapon from the deceased when it was discharged? Are you able to tell us that? A. I can only tell you that it was greater than eighteen inches from the body, because of the fact I found no powder marks on the body or clothing, sir.

* * * * *

26 Q. All right. Now, how many bullet wounds did you find in the body of the deceased? A. Four.

Q. I believe you said the fatal one was the one that ruptured the blood vessel? A. Yes, sir.

Q. Is that right, sir? A. Now, bear in mind when I say there were four wounds, I don't mean four wounds of entrance. I mean two wounds of entrance and two of exit.

* * * * *

28 Q. Yes, sir. All right. Now, can you tell us the condition of the vital organs of the deceased? A. Yes. As far as there being any pathological condition existing in the vital organs that would have been the contributory factor in the death of this individual, it was negative.

I also took a specimen of the blood from this decedent and made an analysis of the alcoholic content; and it was negative.

Q. In other words -- A. He had not been drinking.

Q. He had not been drinking any alcoholic liquor? A. That is right, sir.

* * * * *

31 GERALDINE ELIZABETH WALKER

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

48 CROSS EXAMINATION

BY MR. LAUGHLIN:

* * * * *

57 Q. And she fell to the floor? A. No, sir. She tried to stand up
58 when he let her go, she tried to go back to the bed.

Q. Now, you have told us, earlier, that she mentioned that she had been burned. Did you ever see the marks on her body from these burns? A. I saw on her legs.

Q. Did it cover -- how much of the leg did it cover, Miss? A. Not too much.

Q. All right. Now, then, what next happened then? Now, you were under the bed and you are watching. Tell us then what next happened? A. He got ready to point the gun to her head. And he get ready to shoot. Wasn't no bullets in it. Then he threw the gun on the bed; then he got ready to go out.

Q. And then, what next? A. Then the police caught him at the door.

* * * * *

60 REDIRECT EXAMINATION

BY MR. LOWTHER:

* * * * *

61 Q. Now, then, I want to ask you one other question:

You told Mr. Laughlin when he was questioning you, as you also told me when I was questioning you, that you went under your bed, by that I mean you hid under your bed -- do you remember saying that?

62 A. Yes, sir.

Q. Now, when I questioned you, you told the Judge and Jury that you saw this defendant, Willie Jones, seated here, pointing the gun at the man, dead man now, Reginald Winters, fire going out of it. Do you remember telling us that? A. Yes, sir.

Q. Now, what I want to ask you: Was it before you went under the bed or after you went under the bed? A. Before.

Q. Before? A. Yes, sir.

* * * * *

RECROSS EXAMINATION

BY MR. LAUGHLIN:

* * * * *

67 Q. Geraldine, I want to be sure at this point: Did you see, as you testified to, this defendant, Willie Jones, with the gunfire coming out of it pointed at the dead man? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Where were you when you saw it? A. When I saw it pointed at the man, I was under the bed.

68 Q. Where were you when you saw the fire coming out? A. Sitting on the top of my bed.

Q. How many times did you see the fire come out of it, if you remember? A. Three.

MR. LOWTHER: Three. I don't have any other questions, your Honor.

* * * * *

89 Washington, D.C.
April 14, 1959

* * * * *

99 ALMA RAE JORDON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

100 DIRECT EXAMINATION

BY MR. LOWTHER:

* * * * *

106 Q. All right. Now, do you recall whether or not on August 5, Tuesday, in the evening hours, the man known to you as Reginald Winters came to visit with you in the hospital? A. On that date?

Q. Yes. A. Yes, he was there.

Q. And what time of the evening was it that Reginald Winters came to the hospital, on August 5, I am talking about? A. Around visiting hours.

Q. That would be when? A. About seven o'clock.

Q. And were you in the ward when he came in? A. Yes, I was.

Q. And, of course, that ward is in a building which is in the District of Columbia, is that not correct? A. Yes, it is.

Q. All right. Now, when Reginald Winters came to the ward in the evening hours of Tuesday, August 5, where did he take a position? By that I mean, did he stand up, sit down, and if so, where? A. Well,

107 he sat near the head of my bed.

Q. When you say, he sat near the head of your bed, can you tell His Honor and the Jury, in that position was Reginald Winters facing toward the entrance to the ward or toward the other way? A. He was facing to the window. Facing the window.

Q. Now then, you had conversation with him, did you, after he came in? A. I was just brought down from the operating room.

Q. Yourself? A. Yes, and I was sort of dozing off and on.

MR. LAUGHLIN: Of course, the answer is not responsive to the question.

MR. LOWTHER: May I rephrase it, then?

BY MR. LOWTHER:

Q. Did you talk with Reginald Winters? That is all I am asking you. A. At first, I didn't.

Q. Did there come a time after he got there that you did talk with him? A. Yes, I did.

Q. Now then, after Reginald Winters had taken his seat, can you tell His Honor and the Jury whether in the position in which he was, he was facing toward your bed or not? A. He was facing towards me a
108 little and the window.

Q. I see. And do you know who the patient was in the bed back of the chair that Reginald Winters was in? A. Minnie Thomas.

Q. And do you know the patient who was in the bed next to yours but nearer the door? A. Katie Allen.

Q. Now then, --

MR. LOWTHER: Stand up, Geraldine Walker.

(Whereupon Geraldine Walker stood up.)

BY MR. LOWTHER:

Q. -- do you know where this witness here was? What bed she was in, Miss Jordon, on August 5? A. Right in front of me.

Q. You mean across the ward? A. Across the ward on the other side.

MR. LOWTHER: All right, have a seat.

(Whereupon Geraldine Walker resumed her seat.)

BY MR. LOWTHER:

Q. Now then, can you tell His Honor and the Jury whether or not you know that there was a patient in the ward on August 5, 1958 by the name of Theresa Stewart? A. Yes, she was.

Q. Where was Theresa Stewart's bed in relation to where your bed was and where this girl's bed was, Geraldine Walker's? A. I believe
109 it was about three or four beds from Geraldine.

Q. On the other side from you? A. That is right.

Q. When you say three or four beds from Geraldine Walker's bed, was Theresa Stewart's bed further down the ward from the entrance of the ward, or three or four beds towards the entrance from the Walker bed? A. It was toward the back of the ward.

Q. You mean away from the entrance? A. Yes, it was.

Q. Now then, did you have occasion on August 5, 1958, after Reginald Winters had come into the ward and sat down, to see this Defendant Willie Jones come in? A. Yes, I woke up again and saw him standing in front of Mrs. Stewart's bed.

Q. You say you saw this Defendant Jones standing in front of Theresa Stewart's bed? A. That is right.

Q. Now, what did you see him do after you saw the Defendant Jones standing in front of Stewart's bed? A. I had dozed off again.

Q. And what next do you remember? A. He was standing over me.

Q. Over you. On which side of your bed? And by that I mean on
110 the side of your bed where Reginald Winters was or on the other side of your bed? A. On the other side of the bed.

Q. Would that be the side away from the entrance to the ward or near the entrance to the ward? A. Near the entrance to the ward.

Q. Now, did you see anything in the Defendant Jones' hands at the time you saw him standing over you? A. No, I did not.

Q. Did you see anything in his hands at the time you saw him down towards Theresa Stewart's bed? A. A shoebox.

Q. I want to show you this box which for identification purposes presently bears the number Government's Exhibit No. 1.

Can you tell His Honor and the Jury whether or not this box resembles the shoebox that you say you saw in the Defendant's possession when you saw him standing near Theresa Stewart's bed? A. It resembles the box.

Q. I bed your pardon? A. It resembles the box.

Q. Now then, when you saw the Defendant standing over you, what if anything did he say to you, Jones? A. He asked me was I going to sign the children over to him.

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118 CROSS EXAMINATION

BY MR. AHERN:

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121 Q. Well, did he have any source of employment? A. That, I
122 wouldn't know at the time.

Q. Well, you got to know him pretty well after that; didn't you? A. Yes, I did.

Q. What did he do? What was his job? A. Well, he was driving a truck, but I didn't question him about that.

Q. You didn't question him about that? A. No, I didn't.

Q. Well now, when you met him in December of 1957, did you introduce him to your husband, or Willie Jones, whom you were living with? A. Willie came up on the job, and while we was standing there talking, I introduced him to Willie.

Q. Now, that was the first occasion that either you or he had met this Winters; is that right? A. That is right.

Q. Now, after that initial meeting with Winters, did you see him again? A. Reginald Winters?

Q. Yes. A. Yes, I did.

Q. When was the next time you saw him? A. Coming into the place of business.

Q. In other words, you saw him as he would come in there to eat
123 at the restaurant; is that right? A. Yes.

Q. Then I gather your relationship became social; isn't that right? A. Yes, I talked with him every day.

Q. Aside from talking with him, did you go out with him? A. No, I did not.

Q. When did you and Winters start keeping company? A. We start keeping company in January.

Q. Oh. In other words, in December it was more or less social, just talking, and then in January you started going out with him; is that right? A. I wouldn't say going out with him. We were still talking, friendly basis.

Q. Well now, as a matter of fact, your husband, Willie Jones, the Defendant, was quite concerned about your talking and going out with this fellow; isn't that right? A. He never said nothing to me about it.

Q. He never made any complaint about your association with Winters? A. No, because he wasn't home that often.

Q. All right. Now, you continued seeing him in January, February and March; isn't that right? A. Yes, I did.

124 Q. And as a matter of fact, for a period of time you lived with him; isn't that right? A. No, I definitely did not.

Q. You never lived with him? A. I never lived with Reginald Winters.

Q. You didn't stay overnight with him in your apartment? A. No, I never stayed overnight with Reginald.

Q. All right. Now let me ask you this: As a matter of fact, as your relationship continued with Winters, the Defendant became quite exercised about it; didn't he? A. Well, as I said, in April the 5th, I had left and gone home to my mother's. I was working, and I had no contact with Willie Jones.

Q. Well then, when you left in April -- A. I start taking company with Reginald Winters.

Q. What do you mean started taking company? A. Started going out with him; considering him as my boy friend then.

Q. So that was as of April; is that right? A. As of April 5.

Q. Now, the Defendant became aware of that; didn't he? A. I don't know whether he did or not.

Q. Well now, as a matter of fact, didn't he come up to you and tell you to stop seeing this fellow Winters? A. Well, I had left Willie Jones.

125 Q. I know you had left him, but didn't he come up to you after you had left him and tell you that you were his wife and he wanted you to stop seeing Reginald Winters? A. Yes, he did that.

Q. Now, when did he do that? A. Oh, sometimes in -- I don't remember the exact date, but he used to call. He didn't come to me. He would call me on the phone.

Q. Yes. Can you give His Honor and the members of the Jury about when that was that he started calling you and complaining about your association with Winters? A. Well, in April.

Q. In April? A. Yes, he started in April.

Q. And what did he say? A. Well, it was just a funny conversation.

Q. He told you to stop seeing him; didn't he? A. Yes, he told me to stop seeing him.

Q. What did you say? A. Well, what I told him, after all, I had left him; when I was with him, he didn't treat me right, and I was tired, and I went home to my mother, trying to make a start of my own, a new start.

Q. You took the children with you ? A. I took my children with me.

126 Q. By the way, this Winters was a big fellow; wasn't he? A. Yes, he was.

Q. Around 260 or -70 pounds; isn't that right? A. I wouldn't know that. I know he was a large man.

Q. As a result of your association with him, the Defendant went up and had several conversations with Winters; didn't he? A. I bed your pardon?

Q. Didn't the Defendant accost Winters about your going out with him? A. I don't know whether he talked to Winters about that.

Q. Don't you? A. Winters told me that he had asked him to stop seeing me, and he had gone around to his mother's house and told his mother to get in touch with Reginald, that he wanted to see him.

Q. Well now, as a matter of fact, prior to August 5, about which you testified to, didn't Winters assault the Defendant Willie Jones? A. I don't know that.

Q. You don't know anything about that? A. No, because I wasn't there. I don't know anything about that.

Q. And Winters didn't tell you that he had assaulted and had
127 beaten up the Defendant? A. All he told me, he had his fingers bitten. That is the only thing.

* * * * *

Q. Were you ever in those premises when Winters was there? A. No, I was not.

Q. You did not see any fight between Willie Jones and Winters at that address; is that right? A. No, I did not.

* * * * *

128 Q. What were you in the hospital for? A. A burn on my knee.

Q. And Winters gave you that burn; didn't he? A. He definitely did not.

Q. How did you get that burn? A. By smoking in the bed.

Q. That is what you were in the hospital for? A. Yes, I was.

Q. The burn you received was because you were smoking in the bed? A. Smoking in the bed and the bed caught afire.

Q. And you made that statement, I assume, to the hospital officials when you entered? A. Yes, I told them that.

Q. You gave them the history of how you got those burns? A. Yes, I did.

Q. Now, prior to your going into the hospital, the Defendant Jones had been begging you to come back with him; isn't that right? A. Yes, he called me and asked me to come back to him.

Q. And you had told him that you wouldn't go back to him because you had found a better man in Winters; isn't that true? A. No, I did
129 not tell him that.

Q. You told him that Winters was a better man; didn't you? A. I did not tell him that.

Q. What did you tell him about Winters? A. I didn't tell him anything about Mr. Winters.

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130 Q. Now, did the Defendant Willie Jones know about these burns? A. Not that I know of.

Q. Well, did you tell him that you had been burned? A. No, I did not.

Q. You didn't tell him that this fellow Winters had burned you? A. No, I definitely did not.

Q. And you had never called him on prior occasions and told him that this Winters had beaten you up? A. No, I did not.

Q. Now, prior to your entry into the hospital, keeping in mind you say it was in the month of July, when was the time before that --

131 Strike that. Let me rephrase it.

When was the last time you saw Willie Jones before you went into the hospital? A. He came to my mother's house to see the children. I don't know the exact date that was. When he came there, he had an ice pick and drew this ice pick on me.

* * * * *

Q. And he again asked you at this time, did he not, to come back to him and come back with the children? A. I had the children with me.

132 Q. But he asked you to come back? A. Yes.

Q. And live with him? A. Yes, sir.

Q. And bring the children with you; isn't that right? A. Yes, he did.

Q. You told him that you wouldn't come because you had a better man; isn't that right? A. I told you once that I did not tell him that.

Q. You didn't tell him that you were keeping company with a new boy friend? A. No, I didn't tell him that.

Q. And he didn't bring up the subject? A. Oh, he has mentioned Reginald way before. He had mentioned it before, himself.

Q. Did he call him Reggie? A. Yes, he called him Reggie.

Q. Now, prior to your going into the hospital, you were aware, were you not, that the Defendant had gone over to the D.C. General Hospital for a check-up because he was so exercised and upset about -- A. Who was that?

Q. The Defendant Willie Jones. You knew he had gone over to the D.C. General for a mental check-up; had you not? A. Yes.

* * * * *

135 Q. Now, when did you first know that he was going over to the D.C. General Hospital for a mental check-up? A. When I went to the Precinct to get him out of the house, because I was afraid after he had taken that poison. The policeman came, got him, asked did he take the poison; he told the policeman, no, he did not.

136 I told him to take him out anyway. I would be satisfied if they took him to the hospital. If they was nothing wrong with him, he could come back.

Q. At that time, you thought he was crazy; didn't you? A. No, I couldn't say he was crazy.

Q. You told the policeman to take him over to the mental hospital for a check-up? A. I didn't tell him over to the mental hospital. I said, take him to the hospital.

Q. Now, have you placed the month that this happened in? A. It was in February.

Q. It was in February.

Now, did there come a time subsequent to that --

Did he go to the hospital? A. They kept him.

Q. How long did they keep him? A. About a month, I think.

Q. Now, in that month, of course, he was away from your apartment, and you were still living there; is that right? A. Yes, I was.

Q. Reginald Winters moved in for that month; didn't he?

A. No, Reginald Winters did not move in.

Q. He didn't come in for the thirty-day period that your husband was away? A. Reginald Winters would come to the house, but he did not move in.

137 Q. Well, he would stay overnight; wouldn't he? A. No, he wouldn't.

Q. What time would he leave? A. He would leave before nine o'clock.

Q. All right. Now, that is in February.

When was the next time you heard of your husband going over to D.C. General for a further check-up? A. Well, I don't remember any other time.

Q. Well now,see if I can refresh your recollection.

You went into the hospital in the latter part of July of 1958; right? A. Yes.

Q. He came to visit you, you testified on direct examination, when? When was the first time he came to see you at the hospital? A. On the 21st of July.

Q. On the 21st of July. How does that date stand out in your mind? A. As I said, it was around the 21st.

Q. How does the 21st stand out in your mind? A. I was admitted, I think, on the 21st. I am not sure, but I think I was admitted on the 21st.

Q. Well, did he accompany you to the hospital? A. No, he did not. I was in the hospital when he came up that night, visiting hours. I was in the hospital.

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138 Q. This was your first day into the hospital; right? A. Yes.

Q. Did you go to the hospital by yourself? A. Yes, I did.

Q. All right. Now, what is your recollection now? Who was the first person that visited you? A. Reginald Winters.

Q. He came there, I think, a little before seven; isn't that right?

139 A. Seven or a little after seven, or a little before seven; I don't remember the time.

Q. Isn't it a fact that he had come and gone before the Defendant Willie Jones arrived on the scene? A. No, he hadn't.

Q. All right. So now your recollection is that Willie Jones came there while Winters was there? A. Yes.

Q. Now, do you recall any discussions between them? A. Both of them sat there and talked.

Q. Talked to you or talked to one another? A. They talked to one another and talked to me, too.

Q. Now, did Jones ask what Winters was doing there? A. No, he didn't.

Q. There wasn't any discussion between them as to what he was doing visiting you? A. Oh, no.

Q. No. What was discussed. A. Well, it was just a conversation.

Q. Do you recall what it was? A. He asked me how did I feel; I told him. They started talking about something; I don't remember what it was about.

Q. All right, who left first? A. Reginald left.

140 Q. Reginald left? A. Yes, he left.

Q. And so you were left alone then with Willie Jones; is that right? A. Well, Willie Jones had to leave because the lady that was on the floor at the time were getting all of the visitors out.

Q. So it must have been getting near eight o'clock; right? A. Yes, it was eight o'clock.

Q. Then you say Winters came back? A. Winters came back. He had left a package and he came back after it.

Q. After the visiting hour? A. Yes, he did.

Q. Was there some prearrangement, or did you get permission for Winters to come back after the regular hour expired? A. No, I didn't get permission. He came back after his package.

Q. Had he left a package? A. He left a package right beside the bed.

Q. I see. All right.

Now, bearing in mind that date that you have just related, isn't it a fact that the Defendant Willie Jones, to your knowledge, had been over

141 to the D.C. General on the Thursday and the Tuesday prior to your admittance for a mental check-up? A. The only time I saw Willie Jones was the day that I was admitted, and the day that he came to the hospital and shot me.

Q. Well, did he tell you, when he was at the hospital, that he had been over to the D.C. General? A. No, he did not.

Q. Now, when you were at the hospital, he again asked you to come back with him when you were through; didn't he? A. Yes, he did.

Q. What did you say? A. I told him that I wouldn't.

Q. And he got quite exercised; didn't he? A. No, he didn't.

Q. All right. Now, when was the next time after that initial admittance that you saw the Defendant Willie Jones? A. After I was admitted?

Q. Yes. A. August the 5th.

Q. Now, on August 5, who was the first person that visited you? A. Reginald.

Q. What time did he get in? A. I don't remember the time. I

142 was under ether. I don't remember the time. I had just come out, rather.

Q. Well, was it in the morning or was it in the afternoon, or was it in the evening? A. Well, it was in the afternoon.

Q. And you were quite groggy from the ether; is that right? A. Yes, I was.

Q. And you were dozing; is that right? A. Off and on.

Q. And you can't recall what you said or what Winters said to you; can you? A. No, I can't.

Q. Do you have a specific recollection as to when the Defendant arrived on the scene? A. No, I don't have the time or anything like that.

Q. Now, when he came in, he had his arm in a long cast; didn't he? A. No, he didn't have his arm in a long cast.

Q. You mean there wasn't a cast on the Defendant's arm? A. There was a cast on his arm; it wasn't a long cast; it was just a small thing around in here (indicating).

Q. It went from his shoulder -- A. No, it was not.

143 Q. It did not? A. No.

Q. How long was it? What part of his arm did it cover? A. It was right here and through here (indicating).

Q. It didn't cover, in other words, the length of his arm? A. No, it did not.

Q. You are quite certain about it? A. What I saw --

Q. Just answer my question. A. I can tell you what I saw. It was right here, from here to here (indicating). If he had one up there, I don't know anything about that.

Q. But, of course, if you did see it, you would tell the truth; wouldn't you? A. Yes, I would.

Q. As a matter of fact, you have a good deal of animosity against Willie Jones now; don't you? A. No, I don't.

Q. Let me ask you this, Miss Witness. Have you ever had psychiatric help yourself? A. No, I have not.

Q. You have heard voices; haven't you? A. After this shooting, I thought -- as I said before, yesterday, we have birds -- Reginald used

144 to whistle and those birds would make a little twickle -- what you want to call it -- sould like Reginald's voice to me at that time. But since then, I haven't heard any voices; I have never had mental treatment or mental treatment for anything.

Q. In other words, after Reginald had died, passed away, you kept hearing him whistle; is that right? A. No, I didn't keep hearing him whistle.

Q. You heard a whistle which to you was Reginald's whistle; is that right? A. Well, I guess you could say that.

Q. And that continued for some time after he died? A. No, it did not.

Q. For how long did it continue? A. Just a short period of time.

Q. To whom did you relate that? A. To my father and my mother.

Q. What did you tell your father? A. I told him if I walked the street during the time, after I got out of the hospital about a week, that I would hear a man's voice or something; it would sound so much like Reginald's voice; when I would turn around, no one was there.

Q. But you would recognize the voice as the voice of your ex-boy friend? A. Yes, I did.

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145 Q. But you identified it as Reggie's whistle; is that right?

146 A. Yes, I did.

Q. What is the distinction on the whistle? A. Oh, just like a bird whistle.

Q. But you identified it as Reggie's whistle? A. Yes, I did.

Q. And when did the whistling stop? A. Oh, the whistle just stopped right away. Wasn't nothing to it.

Q. Do you hear the whistle now? A. No, I do not.

Q. Now, when your husband arrived on August 5, you testified you saw him in this cast, as you have described it. Now, Winters was already there; right? A. Yes, he was.

Q. He was sitting up close to your bed; isn't that right? A. Yes, he was.

Q. Do you have any recollection of the first words uttered by your husband to your boy friend? A. No, I do not.

Q. You have no recollection? A. No.

Q. Is that because it was so long ago or that you were under the effects of the ether? A. As I told you before, I was dozing off and on.

Q. As a matter of fact, you can't remember any of the events

147 that occurred on that August 5 day; can you? A. Yes, I can.

Q. All right. Now, when your husband got in, --

THE COURT: When you say, "your husband," you mean Willie Jones, Mr. Ahern?

MR. AHERN: Yes.

BY MR. AHERN:

Q. You treated Willie Jones as your husband; didn't you? A. Yes, I did.

Q. When he got in, do you recall the first words uttered by him to you? A. Willie Jones?

Q. Yes, the Defendant. A. Yes.

Q. What did he say to you? A. He asked me how did I feel.

Q. Do you have a specific recollection of your answer? A. Yes. I told him I felt all right except my legs were hurting.

Q. And then, as I understood your direct examination, you dozed off again; is that right? A. Yes, I dozed off.

Q. Now, do you know how long you dozed off? A. No, I don't know.

148 Q. And what is the next thing you recall? A. He asked me was I going to sign the children over to him; and I told him, no.

Q. Now, he had many times asked you whether you would sign the children over to him; isn't that right? A. No, just that one time.

Q. That was the first time you heard about it? A. That was the first time.

Q. You said, no? A. Because I wouldn't come back to him, and he said, sign the children over to me; and I told him, no.

Q. And did Winters take part in this discussion? A. Winters haven't opened his mouth.

Q. All right. And what was the next thing that was said, if you can recall; or did you doze off? A. There was nothing else said. All I know, I was shot and dragged out of the bed and in the middle of the floor.

Q. We will get to that in a minute. Did you doze off after this thing about the children, after you said you wouldn't sign them over?

A. No, I just put my hand up to my fore head, and I had a sting in the arm, and the arm went limp.

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162 OFFICER ARTHUR HUNTER,

Sworn,

DIRECT EXAMINATION

BY MR. LOWTHER:

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And you are a Metropolitan Policeman? A. Yes, sir.

Q. And you were a Metropolitan Policeman on August 5th, 1958, last year, were you not, sir? A. That's right, sir.

163 Q. And on August 5th, a Tuesday, what tour of duty were you working and what was your assignment? A. I was four to twelve, August 5th, 1958, and my assignment was in the strong room on the second floor of the surgery building of D.C. General.

Q. When you say four to twelve, you mean four in the afternoon to twelve midnight? A. That's right, sir.

Q. Now, the strong room that you speak of, that's the lockup ward at D.C. General? A. That's right.

Q. And there came a time, did there not, in the evening hours when you had occasion to see this defendant, Willie Jones, on the second floor at D.C. General Hospital? A. I did, sir.

Q. And what time was that, Officer? A. It was around 7:30; it was right after I sat down.

Q. When you say you "sat down," did you sit down with relation to the elevators on the second floor, if such there be? A. I was sitting opposite the elevators, the elevators to the right from the corridor which runs north and south on the second floor.

Q. Did you see Jones get off the elevator? A. I did.

Q. And what, if anything, was he carrying, Officer? A. He was

164 carrying a little brown box in his right arm, which had a cast on it.

Q. Now, I want to show you this box, which for identification purposes has been marked Government's Exhibit Number 1. Can you tell His Honor and the Jury whether or not that box resembles the box you saw Jones carrying? A. This box resembles, the same kind, when he got off the elevator.

Q. Prior to the time Jones got off the elevator, in the evening hours of August 5th, 1958, had you seen a man known to you or later identified to you as Reginald Winters enter the D.C. General Hospital, second floor? A. I saw Reginald Winters about 5:30 that day.

Q. Had you seen him leave since 5:30? A. Did I see him leave?

Q. Yes? A. No, he did not leave.

Q. Now, then, where did Reginald Winters go? A. Reginald Winters went to the north ward to visit someone.

Q. And where, from where you were sitting in the north ward, by that I mean: As you sit facing the elevator, to get off, is the ward to your left or to your right? A. It is to my left.

Q. In which direction did this defendant go when he got to the
165 hospital? A. He went to the left after he got to the hospital.

Q. In the direction of the same ward that Winters had gone to? A. He did, sir.

Q. After this defendant Jones had left your presence, did anything unusual take place, and by that, I mean, specifically, did you hear anything unusual, Officer Hunter? A. I did hear something, for it to be in a hospital.

Q. What did you hear, sir? A. I heard something that sounded as if someone was shooting firecrackers.

Q. How many sounds and from what direction did you hear them? A. I heard two explosions like firecrackers coming from the north end of the house ward.

Q. And what did you do at that time? A. At that time, I got up, and walked to the corridor and looked down the hall, and saw this fellow laying in the door.

Q. Of what ward? A. North ward.

Q. Is that the ward -- well, who was the fellow, did you later find out, that you saw laying there? A. I later found out the person laying in the door was Reginald Winters.

166 Q. As you saw the person laying in the door, what did you do yourself? A. As I saw him laying in the door, I took my gun from the holster and ran to the north ward.

Q. Did you see Jones, the defendant? A. I did not see him at the time I was going up the corridor, no.

Q. When did you first see him, and where was it? A. I first saw him when I got within five feet of the door of the north ward.

Q. And where was he at that time, the Defendant Jones?
A. He was stepping over the body of Reginald Winters.

Q. In which direction was this defendant headed as he stepped over the body? By that, I mean which direction was he headed -- A. Out of the door, which was the south.

Q. Did you place him under arrest? A. I did, after I had -- I had my gun drawn on him -- after I asked him for his gun, or where was his gun.

Q. What did he say to you after -- A. I asked him where was his gun, he said, "I laid the gun on the foot of the bed of my common-law wife."

Q. And did you place Jones under arrest at that time, Officer Hunter? A. I did.

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168 Q. At the time you recovered that gun, sir, how many shots had you heard fired? A. I heard five shots fired.

Q. You said twice -- at first, how many, the first series?
A. There was two in the first series.

Q. The remaining three, how did you hear them? Were they altogether or sporadic? A. The third shot after, shortly after the first two, very rapid -- as I was running up the corridor I heard the last two.

Q. As you got up -- strike that.

How far toward the entrance of the ward did you get, as you ran up the corridor, Officer Hunter? A. Well, I got within five feet of the sill of the door of the north ward when I saw this defendant step over the body.

Q. Did you see this woman, Alma Rae Jordon, at the time you were in that position? A. I did.

Q. Where was she? A. She was running around the ward nude -- whatever she held up in front of her.

Q. Now, after you recovered this gun, Government Exhibit 3 for identification, did you break the gun? By that I mean did you open the cylinder to see what, if anything, the cylinder contained? A. I did

169 break the gun.

Q. And what, if anything, did you find, Officer Hunter? A. I found five empty shells in the chambers, in the barrel.

Q. Did you extract those cartridges from the gun? A. I did.

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170 Q. Did you have occasion to have in your possession at any time any slugs, by that I mean, bullets, the lead part of the cartridge? A. Yes, I went back to the ward, and -- oh, yes, I was there -- just before they took him out -- just before they removed him.

Q. Removed who? A. Reginald Winters.

171 Q. All right. And there were two slugs found. They were both under the body? Did you have those slugs in your possession, Officer? A. Yes, I picked them up.

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173 Q. Now, after you had recovered the gun, the slugs and the empty cartridges, which are Government's Exhibits 5, 3, and 6 for identification purposes, did you have occasion to go back down that corridor to your point of duty? A. Back down the corridor to my point of duty, yes.

Q. And was the Defendant Jones there? A. Yes, he was seated at the desk, my desk opposite the elevators. He asked me if it was permissible for him to smoke.

Q. What did you tell him? A. I told him yes. He got a cigarette and smoked it.

Q. How long after you had placed the Defendant Jones under arrest, was it, Officer Hunter, that Sergeant Couture and Weber of the Homicide Squad arrived on the scene? A. Well, it wasn't very long, because the call went out and practically everybody was there.

Q. When you say it "wasn't very long," would you give us -- A. I would say about ten to fifteen minutes, I don't know.

Q. After those officers arrived there, you turned the prisoner
174 over to them, is that correct? A. Yes, I did.

* * * * *

175 Q. Did you have any conversation with the Defendant Jones other than the conversation wherein he asked you, Officer Hunter, if he could smoke a cigarette? A. I didn't have -- I had the conversation with him when I placed him under arrest, yes.

Q. Is that the conversation you related about, "Where is the gun?" A. Well, it was a little more than that. After I led him, I started leading him toward the south, to my desk; I asked him why did he do the shooting, why did he shoot the man, he says, "Well, I'd rather not make any more statements until I see my attorney."

Q. Now --

MR. LOWTHER: Will you indulge me one moment, please, Your Honor.

BY MR. LOWTHER:

Q. Did you have occasion to be close enough -- strike that.

How close to this defendant's face did you get, Officer? A. Oh, I was right up on him; I was very close to him.

Q. Did you smell any alcohol? A. No, I did not smell anything.

* * * * *

176 CROSS EXAMINATION

BY MR. LAUGHLIN:

* * * * *

183 Q. Now, Officer, you as a policeman often times are patrolling the beat late in the night? A. Late -- yes.

Q. Maybe it's dark and rainy? A. Uh-huh.

Q. And people often give you strange looks when you approach them or they approach you, isn't that right? A. Yes, sir.

Q. But do you call those "weird" looks? A. Why -- do I call them weird looks?

Q. Yes. A. Yes, I do.

Q. You -- oh, you do. I take it when you used the term "weird" in that case, that was not synonymous with a psychiatric term, was it? A. No.

Q. You, I take it, haven't studied psychiatry, have you? A. No, sir.

Q. You haven't even had a correspondence course? A. No, sir.

Q. Now, Officer, to the best of your recollection, when you saw the defendant get off the elevator, was that the first time to your knowledge that you had ever seen him? A. It is, sir.

Q. All right. Now, after you saw him get off the elevator, of course, you continued at your post of duty, didn't you? A. That's right,

184 sir.

Q. Did you approach him and say, "What are you doing here?" A. No. No.

Q. Even though you had in mind that he had a weird look in his eyes? A. That's right.

Q. And I believe you just said, you described that, that he looked as if he was up to something? A. That's right.

Q. Did you feel if he was up to something that it was your duty for you to see what it was? A. Was it my duty for me to see?

Q. Yes. A. No, it wasn't my duty, because many a person has given me that same look -- after investigation, that one, that was just his makeup, that's all.

Q. Let me ask you this: You have been at D.C. General how long now? A. I've been over there, between, I'd say, three or four years.

Q. Yes. Now in that time, how many people have you seen with weird looks? A. Oh, quite a few.

185 Q. And would you say it happens almost daily? A. Oh, yes, as far as the policemen is concerned, yes.

Q. All right. Now, at the particular time when you saw Reginald Winters, was there ever a time that he had a weird look? A. Yes, everybody has a weird look at times.

Q. Even he had a weird look? A. That's right.

Q. Now, was there a time -- were there any occasions that you had when it was necessary for you to talk to Alma Jordon? A. No. There hadn't been any occasion that I should with her.

Q. Then let me ask you this: You had seen her there, had you not? A. Oh, yes, she's answered the phone there many times.

Q. All right. And did she ever have a weird look? A. When people are sick, they have weird looks, yes.

Q. Then as far as this area, it was not unusual to see people with weird looks? A. But he was a visitor.

Q. What was that? A. This man was a visitor.

Q. This man was a visitor? A. Yes.

Q. You have just told us that many times you see people with

186 weird looks? A. That's right.

* * * * *

191 Q. * * *

Let me ask you at this point, you have considerable feeling against

192 this Defendant; don't you? A. No, sir.

Q. You want to try to hurt him; don't you? A. Why should I?

* * * * *

195 REDIRECT EXAMINATION

BY MR. LOWTHER:

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196 Q. You explained, as I recall it, both on direct and on cross examination what you meant with relation to that term as to how this Defendant looked.

Then you were questioned as to whether or not you applied that term to anyone else; and my recollection is -- if I am wrong, you correct me -- that you said that Winters, the deceased, at times when you had seen him at the hospital also, according to your terminology, had what you said was a weird look.

Do you recall that testimony? A. Winters?

Q. Yes. I thought you so testified. Did you? A. Before?

Q. During cross examination by Mr. Laughlin. A. Oh, no, not about Winters, but Jones.

* * * * *

198 RECROSS EXAMINATION

BY MR. LAUGHLIN:

* * * * *

202 Q. Well, let me ask you this, sir: At any time you saw Winters, did he have a weird look in his eye? A. I don't remember. I don't think so.

* * * * *

203 LIONEL COUTURE

was called as a witness by the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWTHER:

Q. Your name is Lionel Couture, C-o-u-t-u-r-e; is that correct, sir? A. Yes, sir.

Q. And you are a Metropolitan Police Officer? A. Yes, sir.

Q. Your rank is Detective Sergeant? A. Yes, sir.

Q. You are assigned to the Homicide Squad? A. That is right.

Q. You held that rank and assignment as of the date of August 5, a Tuesday, of last year, Sergeant Couture; is that correct, sir?
A. Yes, sir.

Q. Did there come a time in the early evening hours when you were on duty and you received a call to go to premises known as the District of Columbia General Hospital? A. Yes, sir.

204 Q. When did you receive that call and where were you when you were so notified, Sergeant? A. I was in the office of the Homicide Squad and it was around 7:30, 7:35, 7:40 in the evening.

Q. And you proceeded from Homicide Squad, which is located across from the Court House, to District of Columbia General Hospital?
A. Yes, sir.

Q. When did you arrive there, Sergeant? A. Approximately eight o'clock.

Q. And you were alone or in company with a brother officer?
A. No, Detective Sergeant Authur Weber was with me.

Q. When you got to the District of Columbia General Hospital, you proceeded where? A. I went to the second floor of the surgery building.

Q. When you got there, did you see this Defendant Willie Jones, who is seated over here at counsel table? A. I did.

Q. Where was he when you first noticed him, Sergeant?
A. Mr. Jones was sitting in a chair in a little room directly across from the elevator, as you get off the elevator, on the second floor.

Q. About what time would you place it that you saw the Defendant
205 Jones at the place you have just described? A. That was about eight o'clock.

Q. In the evening? A. Evening.

Q. Did you have a conversation with Jones at that time, Sergeant Couture? A. Yes. I had conversation with him twice.

Q. The first conversation took place how long after you got to the hospital? A. Oh, it was about two or three minutes after I arrived at the hospital.

Q. What did you say to him; what did he say to you? A. Well, I asked him who he was; and I told him who I was. And then I asked him what --

Q. Just a minute, Sergeant, please.

MR. LOWTHER: Indulge me a moment, please, Your Honor.

THE COURT: Very well.

MR. LOWTHER: Thank you, Your Honor.

BY MR. LOWTHER:

Q. Now, will you proceed, please, Sergeant? A. I told him who I was; and I asked him what had happened; and he told me he didn't want to make any statement.

Q. After Jones told you that, where did you go, Sergeant? A. I went in the ward, went past the doorway where there was some
206 interns working on a man who was lying on the floor.

Q. Later known to you as whom, or identified as whom? A. As Reginald Winters.

Q. Go ahead. What did you do then? A. I talked to different persons in the ward, and examined the ward; and about ten minutes later, or so, come back to talk to Mr. Jones again.

Q. Where did you find him the second time, Sergeant? A. He was still sitting in this same chair in this little room.

Q. What was the second conversation? What did you ask him, if anything; what did he tell you, if anything? A. I asked him again if he wanted to tell me what happened; and he said: I will tell you what led up to it.

And then he told me that Alma Jordon, who was in one of the beds in the right-hand side, as you are walking into the ward -- she had a bandage around her arm, a fresh bandage. He told me that he had lived with her about nine years; that they had separated in January of 1958;

that since then, he has had a lot of trouble with her; that he had been in Court with her in May of 1958.

He said that the man that was shot, she had been going with him, and he had trouble with him; that he had caught them together at several places and on one occasion they had a fist fight, and --

Q. They, meaning whom? A. Reginald Winters and Willie Jones
207 had a fist fight.

Q. Go ahead. A. And he said he got the worst of it.

Q. What if anything else did he tell you? A. Well, I asked him about the gun. The gun that was lying on the desk there was identified to me as the gun used in the shooting; and he said it was his gun; that he had it about three weeks.

He said he wouldn't tell me who gave him the gun or where he got the gun.

I asked him that. And then I asked him where he took the gun from home, where he kept it at home.

He said he kept it up in the top closet at home, out of reach of his children. That that day being a visiting day at D.C. General Hospital, he decided to come to the hospital and see Alma Jordon.

That he took the gun and put it in a shoebox, along with a skirt and some papers, personal papers that belonged to Alma Jordon, that she had requested him to bring.

And then he said: You know the rest.

He wouldn't tell me any more about it.

A. During the period of time that you talked with this Defendant Jones, Sergeant Couture, over in the District of Columbia General Hospital, the evening of August 5, can you tell His Honor and the Jury whether or not during that period of time, Jones appeared to you excited,
208 calm, what? A. No, he looked -- he was seated in a chair alongside a desk, and he was sitting there with -- I think he had his right hand in a cast; he had his other hand like this (indicating); and he didn't appear to be emotionally upset. He hadn't been drinking, because I got

close enough to him to see whether there was an odor of alcohol on his breath, and I couldn't detect any odor of alcohol on his breath. And he talked clearly.

Q. Now then, I want to ask you, Sergeant Couture, first of all, Sergeant, with relation to this revolver, which is marked for identification purposes at this time Government's Exhibit No, 3, will you tell His Honor and the Jury where, if you did, you took custody of that gun in the evening hours of August 5, 1958? A. Yes.

Q. Where did you first see the gun and who did you take custody of it from, Sergeant? A. Officer Hunter had this gun. It was on a desk in this same little room, and there was some newspapers over it. And Officer Hunter gave me the gun, along with five cartridges.

Q. Now, with relation to the five cartridges, I want to show you five empty cartridge cases, marked for identification purposes at this time as Government's Exhibit No. 5, in that envelope.

209 Where were those cartridge cases when you first saw them that evening, Officer? A. They were handed to me by Officer Hunter.

Q. And with relation to two lead pellets, led bullets -- I guess they are lead; they are bullets, anyhow -- where if at all did you receive them, and they are marked for identification purposes at this time as Government's Exhibit No. 6. A. They were also handed to me by Officer Hunter.

MR. LOWTHER: Indulge me one moment, please, Your Honor.

BY MR. LOWTHER:

Q. Where, if at all, Sergeant Couture, did you see this box, cardboard box, identified at the present as Government's Exhibit No. 1? A. Well, I had received information about this box and --

Q. Don't tell us what the information was, sir. Where did you first see the box, please? A. I looked on the desk near where the gun was setting in this room, where Mr. Jones was seated, and the box was there.

Q. With respect to the box and the revolver, and the empty cartridge cases, and the bullets, from the time that you took them into your custody in the evening hours of August 5 -- rather, after you took
210 them into your custody, what if anything did you do with them? A. I turned them over to the Property Clerk and made a property return and turned them into the Property Clerk of the Metropolitan Police Department.

A. All right, sir.

* * * * *

215 Q. Now then, there came a time, did there not, Sergeant, when you received information, after you had arrived at the District of Columbia General Hospital that Reginald Winters had died? A. Yes, sir.

Q. When did you get that information, sir? A. It was approximately, oh, about 9:07 or -8, p.m.

Q. And at that time, was the Defendant Jones still at the hospital? A. No, sir; he had been sent to Police Headquarters.

Q. After you received information to the effect that Winters had died, did you have a further conversation with the Defendant Jones? A. I did.

Q. What time was that, sir? A. That was about ten o'clock.

Q. Where did that occur, Sergeant? A. That was in Number One cellblock, Police Headquarters.

Q. What if anything did you tell the Defendant Jones and what if anything did he tell you on this third conversation, sir?

MR. AHERN: Your Honor, at this time, may we come to the bench?

216 (Whereupon counsel approached the bench and the following proceedings were held:)

MR. AHERN: I don't know what the content is that you are about to bring out.

MR. LOWTHER: Let me tell you what it is.

MR. AHERN: Suppose I hear that first.

MR. LOWTHER: He went down and said: Well, he has died. Words to that effect. Do you want to say anything? And Jones said: No, I am not going to make any other statement.

MR. LAUGHLIN: That is all there was to it.

(Whereupon counsel resumed their places at the trial table and the following proceedings were held in open Court:)

BY MR. LOWTHER:

Q. Sergeant, my question to you again, sir, is this: You had a third conversation in the cellblock with Jones? A. Yes, sir.

Q. About 10:00 p.m.? A. Yes, sir.

Q. What did you say to him; what did he say to you, if anything? A. Well, I told him then that the charges will be changed from --

Q. Wait a minute. Let me ask you this: Excuse me, Sergeant, for interrupting you.

The question to you is: Did you tell him Reginald Winters had

217 died? A. Yes.

Q. After you told him that, what if anything did the Defendant tell you? A. I asked him if he wanted to make a statement; and he said, no, he wanted to speak to a lawyer.

* * * * *

CROSS EXAMINATION

BY MR. AHERN:

* * * * *

221 Q. So you are not in a position to say what his mental state was on this occasion? A. Excepting that he appeared to be calm and he answered the questions that I asked him.

* * * * *

231 MR. AHERN: For the record, we make a motion for judgment of acquittal.

THE COURT: Motion denied.

* * * * *

246 Washington, D.C.
April 15, 1959

* * * * *

256 MR. LOWTHER: Your Honor, one question. I have two excerpts from this document Mr. Laughlin read yesterday. I think it is proper to read them to the Jury now.

MR. LAUGHLIN: Yes, sir; it is all right with us.

THE COURT: You may do so.

MR. LOWTHER: The first of the excerpts from the document that defense counsel read to you, ladies and gentlemen, yesterday, is as follows:

"District of Columbia General Hospital

"Washington 3, D.C.

"January 30, 1958

"Memorandum: To the Commission on Mental Health

257 "This is to inform you that Willie Jones, a 36-year old Negro male, who was admitted January 23, 1958, to the Psychiatric Department of the District of Columbia General Hospital for mental observation by Number Five Precinct of the Metropolitan Police Department, was discharged January 29, 1958, as recovered and of sound mind."

Signed, "Philip A. Stebbing, M.D., Superintendent."

And the final document reads as follows:

"United States District Court for the District of Columbia

"In the Matter of Willie Jones, Mental Health No. 128-58. Patient C-36.

"Order

"It being reported by the Commission on Mental Health, acting under the direction of this Court, that Willie Jones, Patient, has been found by the staff of District of Columbia General Hospital to be of sound mind and has been discharged therefrom,

it is by this Court this 30th day of January, 1958, ordered that the Petition filed herein be dismissed."

Signed, "F. Dickinson Letts, Judge."

* * * * *

288 KATIE MAE ALLEN

was called as a witness by the Defendant and, having been first duly sown, was examined and testified as follows:

* * * * *

293 CROSS EXAMINATION

BY MR. LOWTHER:

* * * * *

299 Q. It amazed you; didn't it? A. Yes.

Q. Do you remember I asked you downstairs whether you were hard of hearing? A. Yes.

Q. Like Mr. Ahern did? A. Yes.

Q. All right. Now then, after you saw your daughter, Jean Allen, run out of the ward, you never did get out of bed yourself; did you? A. No.

Q. Did you look around then to see what you could see, what was going on? A. Yes.

Q. And is it the fact, Miss Allen, that you saw this Defendant Jones and the Jordon woman out in the aisle of the ward? A. Yes.

Q. And is it also the fact that you saw at that time, when you saw the Defendant Jones and the Jordon woman out in the aisle of the ward, that there was a gun in the hand of this Defendant Jones? A. Yes.

Q. And when you saw Jones with the gun in his hand, and the Jordon woman out in the aisle, you didn't see how she got out there;

300 did you? A. No.

Q. It is the fact, isn't it, when they were out in the aisle, they were struggling with each other? Isn't that right? A. Yes, that is correct.

Q. What? A. Yes, sir.

Q. And it was at that time that you heard the Jordon woman say, in substance: I will come back to you. Isn't that right? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Now then, after you saw them struggling out in the aisle, Jones, the Defendant, and this Jordon woman, do you recall, Miss Allen, that you saw this Defendant Jones walk over to the bed that had been occupied by the Jordon woman and throw the gun on the bed? A. Yes.

Q. And do you recall that after he threw the gun on the bed, that you saw on the floor near the entrance to the ward the body of the fellow known to you as Reginald Winters? A. Yes.

Q. He was out flat; wasn't he? A. Yes.

301 Q. Do you recall that after this Defendant Jones had thrown the gun on the bed, that he, Jones, started to walk out of the ward over the body of the deceased, Winters, on the floor, and a policeman came and apprehended him? A. Yes.

Q. Do you remember that? A. Yes.

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON 1, D. C.

* * *

June 11, 1962

No. 15,488 - Willie Jones v. U.S.A.

Criminal 843-58

Harry M. Hull, Esq.
Clerk, U. S. District Court
for the District of Columbia
United States Court House
Washington, D. C.

Dear Mr. Hull:

I enclose the mandate of this court reissued today in the above-entitled case.

Very truly yours,

/s/ Joseph W. Stewart,
Clerk.

cc to D. A.

[Filed June 13, 1962]

ORDER EXTENDING TIME WITHIN WHICH
TO FILE ADDITIONAL PLEADINGS

Upon application of the defendant and for good cause shown, it is by the Court this 13th day of June, 1962,

ORDERED, that the time within which the defendant may file additional pleadings in this cause be, and the same is, hereby extended to July 16, 1962.

/s/ Joseph C. McGarraghy
United States District Judge

[Certificate of Service]

[Seen -

/s/ J. A. Lowther
Ass't U.S. Atty.]

[Filed July 16, 1962]

MOTION TO REDUCE OR MODIFY SENTENCE

Now comes the defendant, through his counsel, and pursuant to Public Law 87-423, 87th Congress, H.R. 5143, approved March 22, 1962, 76 Stat. 46, moves the Court to order a hearing in this cause in order that defendant may offer testimony in mitigation of the offense for which he has been convicted and as a result of such testimony he believes the Court will reduce the death penalty imposed in this cause to a penalty of life imprisonment.

In addition to other matters that the defendant will go into at this hearing, request will be made that the Court authorize and direct a commitment to St. Elizabeths Hospital for an extended period to determine the mental capacity of the defendant at this time. At the trial there was considerable evidence introduced as to the defendant's mental capacity at the time of the offense. We are confident that a full examination at this time by the staff at St. Elizabeths Hospital will result in a finding of unsoundness of mind at the present time. This, of course, would make impossible the infliction of the penalty already imposed by the Court.

/s/ James J. Laughlin
* * *
Counsel for Defendant

[Certificate of Service]

[Filed October 2, 1962]

MOTION FOR MENTAL EXAMINATION

Now comes the defendant, through his counsel, and moves the Court for a complete mental examination at this time. In support of this motion there is annexed hereto and made a part hereof affidavit of Emmie Beasley, sister of the defendant.

The record in this case will reflect that there has always been a serious question as to the defendant's mental capacity. While the jury

rejected this as a defense, there was substantial evidence tending to show his mental incapacity. However, since so much time has intervened and in view of the affidavit of the sister who visits him regularly, we believe the interests of justice require a mental examination to determine his mental capacity at the present time.

/s/ James J. Laughlin
* * *
Counsel for Defendant

[Certificate of Service]

[Filed October 2, 1962]

AFFIDAVIT OF EMMIE BEASLEY

Emmie Beasley, being first duly sworn on oath as required by law, deposes and says that she is the sister of the defendant Willie Jones. Affiant visits him regularly at the District Jail. She says that it has been apparent to her and to other members of the family that he is deteriorating mentally. He has lapses of memory, is very much depressed and at times talks irrationally. Affiant believes that his mind is so seriously impaired that he is now suffering from a severe mental disorder and it is the wish of the family that there now be a complete mental examination by direction of this Court.

/s/ Emmie Beasley

[JURAT the 25th day of September, 1962].

[Filed

EXCERPTS FROM TRANSCRIPT OF
DEFENDANT'S MOTION TO REDUCE OR MODIFY SENTENCE
DEFENDANT'S MOTION FOR MENTAL EXAMINATION

1

Washington, D. C.
October 5, 1962

The above-entitled cause came on for hearing on Defendant's Motion to Reduce or Modify Sentence, before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:00 a.m.

* * * * *

18

Washington, D. C.
October 19, 1962

The above-entitled cause came on for further hearing on Defendant's Motion to Reduce or Modify Sentence and Defendant's Motion for Mental Examination before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:10 a.m.

* * * * *

21 THE COURT: Well, I have given very careful consideration to the case. I have reviewed the legislative history again, although I have had occasion to do it before. I, of course, reviewed the statute and I reviewed the facts in this case.

22 It is my judgment that there are no mitigating circumstances which would warrant the Court in granting the motion to reduce or modify the sentence and, therefore, the motion is denied. I will file with the clerk a brief opinion stating my views in that regard.

MR. LAUGHLIN: All right.

MR. AHERN: Your Honor, does your opinion make findings of fact.

THE COURT: I make a finding of fact in the discretion of the Court, there has been no showing in mitigation.

MR. AHERN: Then, Your Honor, for the record, may we request Your Honor to make findings of fact?

THE COURT: I will deny your request.

MR. AHERN: Findings of fact as to mitigation and aggravation.

THE COURT: Mrs. Harris, will you take this.

MR. LAUGHLIN: Your Honor, there is before you a motion for mental examination.

THE COURT: I will hear you on it.

MR. LAUGHLIN: The only thing I can add is there has been no examination of this man since either '58 or early '59. Now a considerable time has intervened and based on the affidavit of the sister, which is before you, as I understand, to my knowledge, has not been contradicted,

23 and we ask that there be a mental examination.

THE COURT: Mr. Lowther, what is the position of the Government?

MR. LOWTHER: If Your Honor please, in regard to the Defendant's motion for a mental examination at this time, the Government takes this position. We do not oppose the motion, but we must say to the Court that we don't advocate it either and ask that the Court allow it. We feel that it is a matter for the Court.

We have this to say, also: That if the Court finds there is sufficient ground upon which the motion should be granted, since this Defendant has been in the District of Columbia General Hospital and he has been in Saint Elizabeths Hospital, the Government would suggest to the Court, if this Court finds that the motion should be granted, the Court should appoint a psychiatrist or psychiatrists independent of the institutions who should examine this man only as to his present mental competency and nothing to do with the date of the crime.

THE COURT: That is true. The only question now before the Court is his present mental condition. I think you will agree with that, won't you, Mr. Laughlin?

MR. LAUGHLIN: Yes, of course, that is right, present condition because we are faced now with another section of the Code, Your Honor.

24 THE COURT: What do you say to the Government's suggestion that the Court appoint an outside psychiatrist?

MR. LAUGHLIN: Your Honor, I would suggest, in view of the seriousness of the offense, based on the McDonald opinion, citing Williams, that we have three outside psychiatrists not connected with any of our prison institutions.

I think this would be the fair thing to do. I would nominate one, Mr. Lowther nominate one, and Your Honor select the third.

THE COURT: What do you think of that, Mr. Lowther?

MR. LOWTHER: No, Your Honor, I think the Court should do it.

THE COURT: I will do this. I will grant the motion for mental examination. I think that in view of the seriousness of the case and the consequences that I should grant it. I think that I should make the appointments. I will be glad to have counsel submit to me names which I will consider, but I will make the selection.

MR. LAUGHLIN: Would Your Honor appoint three?

THE COURT: I will appoint three. I will ask counsel to get together and agree upon the form of an order I should sign, leave in blank the names of the psychiatrists to be appointed, and specifying the period of time within which they shall report to the Court. I will ask counsel on each side to give me the benefit of their suggestions as to who the Court should appoint.

* * * * *

[Filed October 19, 1962]

OPINION

This is a motion to reduce or modify sentence pursuant to the provisions of Public Law 87-423 approved March 22, 1962. Counsel for the defendant contends that there are mitigating circumstances within the terms of the law which warrant the trial judge in making a determination that the case, in his opinion, justifies a sentence of life imprisonment.

At argument on the motion, counsel for defendant contended that the evidence was insufficient to warrant conviction of the offense of first degree murder and, in this connection, they pointed out that, in the Court of Appeals, four judges of that court thought that certain evidence which was received in evidence was prejudicial to the defendant. Counsel further

contended that there was substantial evidence to support the main defense of insanity which was interposed at the trial.

The defendant was convicted of first degree murder and, under the instructions of the Court, the jury necessarily found that the government had proved beyond a reasonable doubt that the defendant inflicted a wound or wounds from which the deceased died; that the defendant had the purpose and intent to kill the deceased; that the defendant acted with malice; and that the defendant acted with premeditation and deliberation.

The Court is of the opinion that each of these essential elements of the crime was established by overwhelming evidence.

The facts are recited in some detail in the opinion of the Court of Appeals, Willie Jones vs. United States of America, 111 U.S. App. D.C. 276, 296 F. 2d, 398, cert. denied 370 U.S. 913.

With respect to the defense of insanity, the jury was charged fully and, by its verdict, necessarily found that the government had established beyond a reasonable doubt either that the defendant was not suffering from a mental disease or mental defect at the time in question or that the offense was not the product of any such condition, if one existed.

The charge to the jury included the lesser offenses of second degree murder and manslaughter. The jury found the defendant guilty of first degree murder which, under the provisions of law in effect at that time, carried with it the mandatory death penalty.

Under the statute relied upon by the defendant, the sentence or resentence shall be governed by the provisions of law in effect prior to the effective date of the Act, "Provided, that the Judge may, in his sole discretion, consider circumstances in mitigation and in aggravation and make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment."

The "sole discretion" vested in the judge is a judicial discretion. It does not mean the arbitrary rule or pleasure of the judge who exercises it. It is not personal discretion. It is to be exercised in conformity with the spirit of the law.

In this case, the spirit as well as the letter of the law is that the sentence shall be governed by the provisions of law in effect prior to the effective date of the Act unless, after considering circumstances in mitigation and in aggravation, the judge in his sole discretion shall make a determination as to whether the case in his opinion justifies a sentence of life imprisonment, in which event he shall sentence the defendant to life imprisonment.

Upon consideration of all of the circumstances in mitigation and in aggravation, it is the determination of the Court that the case in its opinion does not justify a sentence of life imprisonment but that the sentence shall be governed by the provisions of law in effect prior to the effective date of Public Law 87-423.

The motion for reduction of sentence is denied.

/s/ Joseph C. McGarraghy
JUDGE

October 19, 1962.

EXCERPTS FROM TRANSCRIPT OF
DEFENDANT'S MOTION TO REDUCE OR MODIFY SENTENCE
DEFENDANT'S MOTION FOR MENTAL EXAMINATION (Cont'd)

26

Washington, D. C.
October 30, 1962

The above-entitled cause came on for further hearing on Motion for Mental Examination before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:00 a.m.

* * * * *

26 MR. LOWTHER: May I address the Court preliminarily, please?

THE CLERK: Criminal Case 843-58, United States v. Willie Jones.

MR. LAUGHLIN: I might say, Your Honor, Mr. Ahern is engaged in Federal Court in New York. That explains the reason for his absence.

THE COURT: Very well. Thank you very much.

MR. LOWTHER: Your Honor, in the first place, under the order of the Court, I am passing to the Court the Government's suggested list of physicians, three of them, and with that, I also have this to say to Your Honor and to Mr. Laughlin. I have two orders prepared for the Court's signature. The difference in the orders consists of what the Court wants the psychiatrists who examine this Defendant to do. I have got them worded this way:

The first one, not in order of priority or anything, reads, substantially:

". . . to report whether the Defendant is now mentally competent to understand the proceedings against him, to properly assist his counsel, and whether he is now suffering from a mental disease or defect in order to assist the Court in determining whether the
27 sentence heretofore imposed shall be executed."

The other order reads:

". . . to report whether the Defendant is now mentally competent to understand the proceedings against him and properly assist his counsel, and whether the mental condition of the Defendant is such that he understands the nature and extent of his punishment in order to assist the Court . . ."

That is the substantial difference in the two orders, Your Honor.

THE COURT: Mr. Laughlin, do you have any views about the orders?

MR. LAUGHLIN: Your Honor, I couldn't see a great deal of difference. I believe that the first order probably will accomplish what we seek here, and I have no objection to that first order, Your Honor.

THE COURT: I wonder if the second order isn't more realistic. This is a somewhat unusual procedure, as we all know.

MR. LAUGHLIN: Your Honor, unfortunately, I was out of the city last week, necessarily. It seems to me there is a provision in the United States Code that in substance provides for this: That after sentence, if it appears that a man is no longer mentally capable -- and I had a recollec-
28 tion it was 4244, something like that. Does Your Honor recall such a provision in the United States Code?

THE COURT: No, I don't. I don't find any statutory provision covering that. I found an old case, prior to our present Code provision, the case of Neeley v. United States in 80 U. S. Appeals, dealing with an old statute, which says that the purpose of the statute is to prevent the infliction of punishment upon a person so lacking in mental capacity as to be unable to understand the nature and purpose of the punishment. Which, of course, is what you proposed in your second order, as I understand it, Mr. Lowther.

MR. LAUGHLIN: Does that quote a provision of the D. C. Code or U.S.?

THE COURT: Provision of the old D. C. Code prior to the amendment of 1955. I don't find the present D. C. Code deals specifically with the problem. It seems to me that what I am facing up to is the matter of the duty of the Court, what you might call the common law duty of the Court to determine the question of this man's present mental condition, as to whether or not the sentence should be carried out.

MR. LAUGHLIN: Yes, that is the whole thing, Your Honor.

29 THE COURT: Isn't that the problem? If that is so, it would seem to me that this second order would be the proper one.

How does it read, Mr. Lowther?

MR. LOWTHER: Whether he is competent to assist counsel, understand the nature of the proceedings, and his mental condition is such that he understands the nature and extent of the punishment.

MR. LAUGHLIN: Upon reflection, Your Honor, I believe the second order would be preferable, and I think that would embrace what we are trying to do here.

THE COURT: I think so. I believe the second order is more comprehensive and probably is designed to accomplish the information we need at this time.

Do you agree, Mr. Lowther?

MR. LOWTHER: I do, Your Honor.

THE COURT: Suppose I sign the second order.

Now, with respect to these psychiatrists who have been proposed,

do you know if the ones you proposed are willing to serve?

MR. LOWTHER: I didn't inquire of them, Your Honor, but I am sure they would be. I haven't been in personal communication with them.

MR. LAUGHLIN: Mr. Lowther raised the point -- the fact is, I

30 should recall this, although the case, as Your Honor knows, has been over three years ago -- Mr. Lowther's recollection is that one of the psychiatrists, Dr. Miller, had testified in the trial.

MR. LOWTHER: That is my recollection.

THE COURT: That is my recollection.

MR. LAUGHLIN: Then he would be eliminated. While I have not spoken to Dr. Odenwald -- I am sure Your Honor knows him -- I am certain under the circumstances he would be willing to serve, and I think the same would go for Dr. Rickman. Now, Your Honor, Dr. Rickman hasn't been in your Court. He is attached to Howard University; he is attached to Freedmen's Hospital; and I can state to Your Honor, as a fact, that he has testified in this Court as an expert witness; and furthermore, I expected him to testify in a case which was to get under way today and was continued.

THE COURT: What can you tell me about Dr. Odenwald?

MR. LAUGHLIN: Dr. Odenwald has testified here, I would say, at least to my knowledge, fifteen or twenty times. He studied in Vienna, and he was on the faculty of Catholic University. He has written a number of textbooks, and he is thoroughly qualified and knows his subject well. He has testified, Your Honor, I know, before Judge Curran. He has testified

31 just recently before Judge Schweinhaut, and testified before Judge Holtzoff. So he has been qualified to express an opinion, Your Honor. As I say, he was head of the School of Psychiatry or the Department of Psychiatry at Catholic University; and he has written textbooks.

I don't know whether Mr. Lowther has ever encountered him in the courtroom.

MR. LOWTHER: I am very very familiar with Dr. Odenwald.

MR. LAUGHLIN: He speaks with an accent, Your Honor.

THE COURT: What do you want to say about him?

MR. LOWTHER: Nothing, Your Honor, except that -- well, I hadn't better say anything.

I would make this suggestion, subject to my friend's comments and Your Honor's approval: While we have submitted certain names -- the names I submitted are Doctors Cavanagh, Marland and Klein -- I don't think that that restricts this Court.

THE COURT: I don't think so either.

MR. LOWTHER: To those lists. If Your Honor sees fit, in your good discretion, you could pick three that would do justice to all parties concerned.

THE COURT: I dislike bringing this man back, bringing the Defendant back here because I know he is under a strain every time he is brought back.

32 MR. LAUGHLIN: Yes.

THE COURT: I do think, however, that I should give this some consideration, and I assume that when I sign the order, he should be present in the Court at the time I sign it.

MR. LAUGHLIN: Yes.

MR. LOWTHER: Yes.

THE COURT: I think I have got to continue this matter.

You agree with the form of the order, Mr. Laughlin?

MR. LAUGHLIN: Oh, yes, I agree with the form of the order.

Your Honor, I would like to say this, that while there is no question Dr. Cavanagh is a recognized authority throughout the country, the Defendant, himself, does object to Dr. Cavanagh.

THE COURT: Well, I will have that in mind also.

Is it convenient for you gentlemen for us to meet next Tuesday morning? It will be only for a few minutes.

MR. LOWTHER: That will be convenient.

MR. LAUGHLIN: Oh, certainly. Your Honor, may I say this: If you could make it later than that, I have been given permission to go to Indiana

33 for the election Monday, Tuesday and Wednesday of next week.

* * * * *

[Filed November 8, 1962]

GOVERNMENT'S SUGGESTED LIST OF PHYSICIANS FOR THE EXAMINATION OF THE DEFENDANT

In accordance with the order of the Court that counsel for the defendant and counsel for the Government submit a list of psychiatrists for the examination of the defendant in this case, the Government respectfully suggests the following named physicians.

1. Dr. Albert E. Marland, Sr.
   1216 - 16th Street, N.W.
   Washington, D.C.
2. Dr. John R. Cavanagh
   1703 Rhode Island Avenue, N.W.
   Washington, D.C.
3. Dr. Elmer Klein
   1801 Eye Street, N.W.
   Washington, D.C.

/s/ David C. Acheson
United States Attorney

/s/ Joseph A. Lowther
Assistant United States Attorney

[Certificate of Service]

[Filed November 8, 1962]

MEMORANDUM WITH RESPECT TO PSYCHIATRISTS

The defendant suggests the following psychiatrists who have already testified as expert witnesses and who are not connected with any of the District of Columbia or Federal institutions:

1. Dr. Robert P. Odenwald
   3701 Livingston Street, N.W.
   Washington 15, D.C.
2. Dr. Edward E. Rickman
   4411 13th Place, N.E.
   Washington, D.C.

3. Dr. Michael M. Miller
1323 New Hampshire Ave., N.W.
Washington, D. C.

/s/ James J. Laughlin
* * *
Counsel for Defendant

EXCERPTS FROM TRANSCRIPT OF
DEFENDANT'S MOTION TO REDUCE OR MODIFY SENTENCE
DEFENDANT'S MOTION FOR MENTAL EXAMINATION (Cont'd)

34 Washington, D. C.
November 8, 1962

The above-entitled cause came on for further hearing on Defendant's Motion for Mental Examination before the HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, at 10:10 a.m.

* * * * *

35 THE CLERK: United States v. Willie Jones, Criminal Case No. 843-58.

THE COURT: Mr. Laughlin, since we were last here, I have reviewed the names of the psychiatrists proposed by counsel for the Government and by you, and I have decided to appoint a panel consisting of Dr. John R. Cavanagh, Dr. Robert H. Groh and Dr. Albert E. Marland, Sr.

I have been in touch with all three of them, and they expressed willingness to serve. I also inquired about how long a time they would need in order to make a report to the Court; and they indicated that thirty days would be ample time for that. Therefore, I am including in the order a requirement that the report be made to the Court on or before December 10, 1962, which does allow the full thirty days.

MR. LAUGHLIN: Very well. Now, has Your Honor signed the other order?

THE COURT: What other order?

MR. LAUGHLIN: The other order that we were here originally on, where you refused to reduce it from --

THE COURT: I haven't any order before me to sign.

MR. LOWTHER: I think the Memorandum of Opinion would constitute the order.

THE COURT: I think that is the order.

36 MR. LAUGHLIN: There would have to be an order from which to appeal. I think the order was left with you.

THE COURT: I am afraid it wasn't, but I will be perfectly willing to sign an order, if an order is required. I think I know what you have in mind, because you want the time to appeal to be fixed.

MR. LAUGHLIN: That is right.

THE COURT: My impression is that at the time I filed the opinion that served as an order.

MR. LAUGHLIN: Yes, but you recall then on the next occasion Mr. Lowther presented two drafts, and you said the second was preferable to the first.

THE COURT: But they both related to this matter of mental examination. He presented two drafts, one providing for one type and one providing for another.

Is that right, Mr. Lowther?

MR. LOWTHER: That is correct, Your Honor.

MR. LAUGHLIN: It may be then I misunderstood. Then, Your Honor, suppose I present an order.

THE COURT: You do that.

MR. LAUGHLIN: So that his appeal rights would be protected.

THE COURT: Will you submit it to Mr. Lowther and have him sign it?

37 MR. LAUGHLIN: Yes, I will do it. Your Honor, after that is done, may I leave this with you -- while he has originally executed an affidavit in forma pauperis -- so he may be permitted to appeal?

THE COURT: Very well.

MR. LAUGHLIN: I have given a copy of that to Mr. Lowther.

THE COURT: While we are about it, will you indicate your approval? This is the order you indicated you thought should be signed.

Do you have any objection to this appeal in forma pauperis?

MR. LOWTHER: No, Your Honor, I can't in justice say I have.

MR. LAUGHLIN: I have signed Mr. Ahern's name also. I have authority to sign his name, Your Honor.

THE COURT: Very well.

MR. LAUGHLIN: General authority.

THE COURT: Very well. I will sign this order and I will also send a copy of the order to each of the three psychiatrists today.

MR. LAUGHLIN: Very well, Your Honor.

MR. LOWTHER: May I have the name of that middle one, Your Honor?

38 THE COURT: Dr. Robert H. Groh.

MR. LOWTHER: Thank you.

THE COURT: I am also signing this order granting leave to proceed in forma pauperis.

MR. LAUGHLIN: Yes, all right.

THE COURT: Mr. Laughlin, will you submit a proposed order on this other matter?

MR. LAUGHLIN: As a matter of fact, I will leave it with the clerk during the afternoon, and leave a copy -- it will be just a simple order.

THE COURT: I understand.

MR. LAUGHLIN: Your memorandum will state the reasons.

THE COURT: Yes.

MR. LOWTHER: Your Honor, under the Court's order as to the mental examination, the wording of that order makes it clear, as I understand it, that the Defendant Jones goes to the District of Columbia Jail?

THE COURT: Yes. The order reads, so there is no misunderstanding:

> "Defendant Willie Jones at the District of Columbia Jail or at the District of Columbia Jail Hospital . . ."

That is understood.

* * * * *

[Filed November 8, 1962]

ORDER

This cause having come on for hearing on October 19, 1962, upon the defendant's motion for a mental examination, the defendant, defendant's counsel and counsel for the Government all being present in open Court, the Court having heard argument from counsel for the defendant and from counsel for the Government, and the Court being well and fully advised in the premises, it is by the Court, this 8th day of November, 1962,

ORDERED:

1. That Dr. John R. Cavanagh, address - 1703 Rhode Island Avenue, N. W., Washington, D. C.; Dr. Robert H. Groh, address - 1801 Eye Street, N. W., Washington, D. C.; and Dr. Albert E. Marland, Sr., address - 1216 16th Street, N. W., Washington, D. C., examine the defendant Willie Jones at the District of Columbia Jail or at the District of Columbia Jail Hospital, and that after such examinations the said Doctors furnish the Court with a report as to whether the defendant is now mentally competent to understand the proceedings against him and properly assist his counsel and whether the mental condition of the defendant is such that he understands the nature and extent of his punishment in order to assist the Court in determining whether the sentence heretofore imposed in this case should be executed. Copies of said report are to be furnished counsel for the defendant and counsel for the Government.

2. That the said Doctors may, if they find need so to do, employ a psychologist or psychologists to assist them in their examinations.

3. That the fees to be paid to said Doctors and said psychologists are to be paid by the Administrative Office of the United States Courts, and said fees are to be $50.00 for examination and $50.00 for testimony if and when required.

4. That the report of said Doctors is to be furnished this Court on or before December 10, 1962.

/s/ Joseph C. McGarraghy
JUDGE

SEEN:

/s/ James J. Laughlin
/s/ Albert J. Ahern, Jr.
Attorneys for Defendant

[Filed November 8, 1962]

ORDER DENYING MOTION TO MODIFY SENTENCE

This cause came on to be heard on the motion filed by the defendant to reduce or modify sentence and same was argued by counsel and upon consideration thereof, it is by the Court this 8th day of November, 1962,

ORDERED, that the motion be, and the same is, hereby denied.

/s/ Joseph C. McGarraghy
United States District Judge

[Certificate of Service]

[Filed November 8, 1962]

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

Upon application of the defendant and it appearing to the Court that the defendant has previously executed an affidavit in forma pauperis, it is by the Court this 8th day of November, 1962,

ORDERED, that the appeal is this cause be filed without prepayment of cost and leave is hereby granted to the defendant to proceed in forma pauperis, and

IT IS FURTHER ORDERED, that counsel for the defendant be furnished copy of the stenographic transcript of proceedings in this Court on October 5, 1962 and October 30, 1962 and the expense of said transcript shall be paid at the expense of the United States.

/s/ Joseph C. McGarraghy
United States District Judge

[Filed November 14, 1962]

NOTICE OF APPEAL

Name and address of appellant -- Willie Jones, D. C. Jail.

Name and address of appellant's attorney -- James J. Laughlin, National Press Building.

Offense -- First degree murder.

Concise statement of judgment or order, giving date, and any sentence -- Refusal to reduce the penalty from death in the electric chair to life imprisonment pursuant to provisions of Public Law 87-423, approved March 22, 1962. Order denying motion to modify sentence dated November 8, 1962.

Name of institution where now confined, if not on bail -- D. C. Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date -- November 13, 1962

/s/ Willie Jones
Appellant

/s/ James J. Laughlin
Attorney for Appellant.

* * *

Motion for Mental Examination

Comes now, Willie Jones, the Petitioner, asks This Most Honorable Court, to grant, Petitioner, Motion for a Mental Examination, and to be sent directly to Saint Elizabeths Hospital, in Washington, D. C.

(1.) That Petitioner was previously examined by Five (5) Psychiatric Doctors, and Petitioner was found to be, "of Unsound Mind."

(2.) That Petitioner has been to D. C. General Hospital, concerning his Mental Condition.

(3). That Petitioner feels, he is still, Mentally Ill, at present time.

(4). That the product of Petitioner's crime was, through his Mental Condition.

(5). That Petitioner's wife has stated, "that Petitioner has taken, Rat Poison."

(6). That Petitioner is entitled to a Mental Examination, under the Durham Rule.

(7). That Petitioner is a pauper, and unable to pay "fees or cost," to said, suit or action.

(8). That Petitioner believes, "he is entitled to redress, he seeks in "suit or action."

(9). That because of my poverty, I am unable to pay cost of said, suit or action.

(10). That I am a citizen of United States.

/s/ Willie Jones

I, Willie Jones, hereby certify, the facts in this Motion are true, best to my knowledge, and I have on this 16 day of, Nov. 1962, Forwarded to, a copy Mr. David C. Acheson, U. S. District Attorney, and two copies to U. S. District Court, of District of Columbia, of Washington, D. C.

/s/ Willie Jones

[JURAT the 16th day of November, 1962].

[Filed November 19, 1962]

Mental Examination has been ordered.

/s/ McGarraghy
Judge

[Filed November 20, 1962]

MOTION TO DISQUALIFY DR. JOHN R. CAVANAGH

In the above entitled cause mental examination has been ordered by this Court. The following doctors were designated:

1. Dr. John R. Cavanagh
2. Dr. Robert H. Groh
3. Dr. Albert E. Marland

It will be recalled that the defendant has noted an objection on October 30, 1962 to the appointment of Dr. Cavanagh. We have now received in the mail from the District Jail copy of defendant's motion for mental examination. Quite likely the original has now been filed in this Court. These matters are displeasing because counsel is doing everything for the defendant that can possibly be done. Unquestionably the defendant did not prepare this motion himself but it was prepared by some inmate at the Jail. Undoubtedly it was brought about by the action of this Court in appointing Dr. Cavanagh.

We do not question Dr. Cavanagh's integrity and [h]is professional standing. However, Dr. Cavanagh in season and out of season has condemned the so-called Durham rule. Whether one likes it or not the Durham rule is now the law in this jurisdiction. Since his antipathy will affect his thinking and since the life of the defendant is in the balance, Dr. Cavanagh should be forthwith disqualified.

While the matter of the appointment of psychiatrists is within the discretion of the Court and while we have in the past been confronted with the saying, "Beggars cannot be choosers," we believe that a Negro psychiatrist should be appointed in his stead. There are many qualified Negro psychiatrists.

/s/ James J. Laughlin
* * *
Counsel for Defendant

[Certificate of Service]

[Filed November 27, 1962]

ORDER

The Court being of the opinion that the averments of the motion are without merit, it is, this 27th day of November, 1962

ORDERED that the Motion to Disqualify Dr. John R. Cavanagh be, and it is hereby, denied.

/s/ Joseph C. McGarraghy
JUDGE

[Filed November 28, 1962]

November 26, 1962

The Honorable Joseph C. McGarraghy, Judge
United States District Court for the
District of Columbia
Constitution Avenue and John Marshall Place, N.W.
Washington, D. C.

Dear Judge McGarraghy:

We, the three undersigned, are submitting our joint report on Willie Jones, whom you asked us to see as a panel. We conducted this evaluation of Willie Jones on November 22, 1962 at the District Jail at 9:00 A.M.

Willie Jones refused to talk to us in the assigned room where he was to be brought to meet with us. We then went on to the cell block and talked to him very briefly through the barred door. He was advised why we were there and that it was under order of the Court and that we wanted to ask him some questions. He said, "I have nothing to talk about, I am going to die, that is all there is to it, therefore, there's nothing to say." He then turned around and walked away and would not come back. During this brief contact with him he was restless, shrugged his shoulders frequently and was quite tense, obviously.

It is the joint opinion of the three undersigned, that Willie Jones showed no inappropriate affect, but rather was a tense individual who recognized the nature of the sentence that had been imposed upon him and it was our opinion that he was showing the severe tension in the realization and understanding of what was to happen to him. It is our opinion that he is completely oriented and understands the nature of his problem.

Respectfully submitted,

/s/ Robert H. Groh, M.D.

/s/ John R. Cavanagh, M.D.

/s/ Albert E. Marland, Sr., M.D.